

No. 2 (R. 30)
REVISED STATEMENT OF CLAIM

CANADA
PROVINCE OF SASKATCHEWAN

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA

BETWEEN:

THE SASKATCHEWAN FEDERATION OF LABOUR (IN ITS OWN RIGHT AND ON BEHALF OF THE UNIONS AND WORKERS IN THE PROVINCE OF SASKATCHEWAN); ADVANCED EMPLOYEES' ASSOCIATION AND ITS LOCALS 101 AND 102; AMALGAMATED TRANSIT UNION, LOCAL 588; CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES' UNION, LOCAL 397; COMMUNICATIONS, ENERGY, AND PAPERWORKERS' UNION OF CANADA AND ITS LOCALS; CONSTRUCTION AND GENERAL WORKERS' UNION, LOCAL 180; GRAIN SERVICES UNION; HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN; INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF U.S., ITS TERRITORIES AND CANADA AND ITS LOCALS 295, 300, 669; INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRONWORKERS, LOCAL 771; INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS, LOCAL 119; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 2038, 2067 AND 529; SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION; SASKATCHEWAN JOINT BOARD RETAIL, WHOLESALE AND DEPARTMENT STORE UNION; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985; UNITED MINE WORKERS OF AMERICA, LOCAL 7606; UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION AND ITS LOCALS; UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES/HOTEL EMPLOYEES, RESTAURANT EMPLOYEES' UNION LOCAL 41; UNIVERSITY OF REGINA FACULTY ASSOCIATION; LARRY HUBICH; BOB BYMOEN; GARRY HAMBLIN; TREVOR HOLLOWAY; SASKATCHEWAN PROVINCIAL BUILDING & CONSTRUCTION TRADES COUNCIL; UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 179; CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS 7 AND 4828; AND TEAMSTERS, LOCAL 395

PLAINTIFFS

AND

HER MAJESTY THE QUEEN ,
IN RIGHT OF THE PROVINCE OF SASKATCHEWAN

DEFENDANT

NOTICE TO DEFENDANT

1. The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court unless within 20 days if you were served in Saskatchewan:

- within 30 days if you were served elsewhere in Canada or in the United States of America; or
- within 40 days if you were served outside Canada and the United States of America (excluding the day of service) you serve a Statement of Defence on the plaintiff and file a copy thereof in the office of the local registrar of the Court for the judicial centre above-named.

2. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.

3. This Statement of Claim is to be served within six months from the date on which it is issued.

4. This Revised Statement of Claim is issued at the above-named judicial centre the th day of December, 2009.

Local Registrar

CLAIM

The Plaintiffs:

5. The Plaintiff, Saskatchewan Federation of Labour (“SFL”), is the umbrella organization for trade unions in the province of Saskatchewan with an office at # 220, 2445 13th Avenue, Regina, SK, S4P 0W1. The SFL brings this action on behalf of itself and on behalf of its 37 national and international affiliated unions, representing over 700 locals and approximately 95,500 employees in the province of Saskatchewan.

6. The Plaintiff, Advanced Employees’ Association and its Locals 101 and 102 (“AEA”), is a union and an affiliate of the SFL. The AEA represents workers in industrial manufacturing with an office at 106 Wells Street, Regina, SK, S4R 5M7. The AEA represents over 300 workers in industrial manufacturing and welding.

7. The Plaintiff, Amalgamated Transit Union, Local 588 (“ATU 588”), is a union and an affiliate of the SFL. The ATU 588 represents transit workers in Saskatchewan with an office at 7222 Spooner Drive B, Regina, SK, S4X 4H5. The ATU 588 is composed of approximately 270 bus drivers, maintenance and clerical personnel and other transit and municipal employees.

8. The Plaintiff, Canadian Office and Professional Employees Union, Local 397 (“COPE 397”), is a union and an affiliate of the SFL which represents workers in the insurance industry in Saskatchewan with an office at #109 - 2709 12th Avenue, Regina, SK, S4T 1J3. COPE 397 represents over 1,550 members working at Saskatchewan Government Insurance (“SGI”), Service Employees International Union (“SEIU”), Saskatchewan NDP Provincial and Caucus Offices and Saskatchewan NDP Constituency Assistants in the province of Saskatchewan.

9. The Plaintiff, Communications, Energy and Paperworkers' Union of Canada and its Locals ("CEP"), are unions and affiliates of the SFL which represents workers in various industries in Saskatchewan, with an office at 2365 13th Avenue, Regina, SK, S4P 0V9. The CEP represents approximately 10,000 workers in Saskatchewan from pulp and paper mills, telephone companies and the oil, gas, energy, chemical and mining industries. They are printers, journalists, radio and TV broadcasters, graphic artists, hotel workers, IT workers and truck drivers, ~~plus others~~.

10. The Plaintiff, Construction and General Workers' Union, Local 180 ("Construction Workers 180"), is a union and an affiliate of the SFL with an office at 1866 McAra Street, Regina, SK, S4N 6C4. The Construction Workers 180 represents approximately 500 workers province-wide in the labourers trade, manufacturing plants, maintenance work, pipeline sector and commercial and industrial construction.

11. The Plaintiff, Grain Services Union and its Locals ("GSU"), are unions and affiliates of the SFL with an office at 2334 McIntyre Street, Regina, SK, S4P 2S2. The GSU is affiliated with the International Longshore and Warehouse Union of Canada. The GSU represents approximately 1500 workers including members working for AgPro Grain, WildWest Steelhead fish farm, Heartland Livestock, the Western Producer, PrintWest Communications, Grain Millers Canada Corp., Mondrian Canada Inc., IATSE 295 and Viterra's Carman bean plant.

12. The Plaintiff, Health Sciences Association of Saskatchewan ("HSAS"), is an independent union which represents health care workers in Saskatchewan with an office at 42 - 1736 Quebec Avenue, Saskatoon, SK, S7K 1V9. The HSAS represents over 3,100 ~~2,900~~ health professionals in all the health regions throughout Saskatchewan.

13. The Plaintiff, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of U.S., its Territories and Canada, and its Locals 295, 300 and 669 (“IATSE, ~~Locals 295, 300 and 669~~”) represents employees in the entertainment industry in Saskatchewan. IATSE is the largest union in the entertainment and related industries. It is affiliated with the SFL. IATSE represents stage hands, projectionists, and personnel involved in motion picture and television production, product demonstration and industrial shows, conventions, facility maintenance, casinos, audio visual, and computer graphics. IATSE Local 295 has an office at 1831 College Avenue, Regina, SK, S4P 4V5. IATSE Local 300 has an office at 6th Fl., 245 - 3rd Avenue S, Saskatoon, SK, S7K 3N9. IATSE Local 669 has an office at #217, 3823 Henning Drive, Burnaby, BC, V5C 6P3.

14. The Plaintiff, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 771 (“Ironworkers Local 771”), is a union and an affiliate of the SFL which represents workers in the construction and manufacturing industries with an office at 1138 Dewdney Avenue East, Regina, SK, S4N 0E2. The Ironworkers Local 771 represents approximately 400 workers.

15. The Plaintiff, International Association of Heat and Frost Insulators and Allied Workers, Local 119 (“Heat and Frost Workers 119”), is a union and an affiliate of the SFL which represents approximately 125 heat and frost workers in Saskatchewan with an office at 444 Quebec Street, Regina, SK, S4R 1K7.

16. The Plaintiff, International Brotherhood of Electrical Workers Locals 2038, 529 and 2067 (“IBEW”), are unions with electrical workers in Saskatchewan, affiliated to the SFL. Local 2038 represents approximately 300 members working in construction, maintenance and service with an office at 1802 McAra Street, Regina, SK S4N 6C4. Local 529 represents approximately 250 electrical workers in Saskatchewan with an office at 2717B Wentz Avenue, Saskatoon, SK, S7K 4B6. Local 2067 represents approximately 1631 members who are utility and mine workers with an office at 1810 McAra Street, Regina, SK, S4N 6C4.

17. The Plaintiff, Saskatchewan Government and General Employees' Union ("SGEU"), is a union and an affiliate of the SFL which represents approximately 20,000 public sector workers in community service agencies, Crown corporations, education, health care, retail and regulatory, and government employment in Saskatchewan with an office at 1440 Broadway Avenue, Regina, SK, S4P 1E2.

18. The Plaintiff, Saskatchewan Joint Board, Retail, Wholesale and Department Store Union ("RWDSU"), is comprised of 16 locals representing workers in the retail industry, warehouses, service sector, hotels, restaurants, entertainment industry and some Crown corporations with an office at 1233 Winnipeg Street, Regina, SK, S4R 1K1. RWDSU is affiliated to the SFL.

19. The Plaintiff, United Brotherhood of Carpenters and Joiners of America, Local 1985 ("UBCJA 1985"), is a union and an affiliate of the SFL with an office at 1170 Winnipeg Street, Regina, SK, S4R 1J6. The UBCJA 1985 has approximately 600 members who represent numerous skilled trades people, including carpentry workers in the construction industry.

20. The Plaintiff, United Mine Workers of America Local 7606 ("UMWA 7606"), represents mine workers in Saskatchewan with an office at Box 426, Estevan, SK, S4A 2A4. UMWA 7606 is a union and has been protecting workers' rights for over 100 years. UMWA 7606 is affiliated with the SFL and it represents 300 coal miners in the province of Saskatchewan.

21. The Plaintiff, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and its Locals ("Steelworkers") is a union and an affiliate of the SFL. The Steelworkers represents workers in many industries throughout Saskatchewan and has an office at #26 - 395 Park Street, Regina, SK, S4N 5B2.

22. The Plaintiff, Union of Needletrades, Industrial and Textile Employees/Hotel Employees, Restaurant Employees' Union, Local 41 ("Unite/Here") is a union and an affiliate of the SFL which represents approximately 430 workers in the hotel and restaurant industry in the province of Saskatchewan with an office at 1317 - 9th Avenue N, Regina, SK, S4R 0E6.

23. The Plaintiff, University of Regina Faculty Association ("URFA"), represents workers at the University of Regina with an office at Room 122 - Campion College, University of Regina, Regina, SK, S4S 0A2. URFA is a professional organization for University of Regina employees. URFA represents approximately 1400 members of the academic staff, librarians, laboratory instructors, and sessionals at the University of Regina, Campion College and Luther College; administrative, professional and technical employees at the University of Regina; and academic staff and administrative, professional and technical employees at the First Nations University of Canada.

24. The Plaintiff, Larry Hubich, is President of the SFL and a former computer programmer with an address at # 220, 2445-13th Avenue, Regina, SK, S4P 0W1.

25. The Plaintiff, Bob Bymoan, is a highways workers and the President of the SGEU with an address at 1440 Broadway Avenue, Regina, SK, S4P 1E2.

26. The Plaintiff Garry Hamblin is an injuries adjustor at SGI, and is the President of COPE 397 with an address at #109, 2709-12th Avenue Regina, SK, S4T 1J3.

27. The Plaintiff Trevor Holloway is a coffee barrista and a member of RWDSU Local 568 with an address at 1233 Winnipeg Street, Regina, SK, S4R 1K1.

28. The Plaintiff Canadian Union of Public Employees, Local 4828 ("CUPE 4828"), is a union representing employees at the SFL and is an affiliate of the SFL with an address at #220, 2445 13th Avenue, Regina, SK, S4P 0W1.

29. The Plaintiff Canadian Union of Public Employees, Local 7 (“CUPE 7”), is a union representing approximately 400 employees working for the City of Regina and is an affiliate of the SFL with an address at Box 4132, Regina, SK, S4P 3W5.

30. The Plaintiff Teamsters, Local 395 (“Teamsters 395”) is a union representing truck drivers in Saskatchewan, with an address at #235, 1055 Park Street, Regina, SK, S4N 5H4.

31. The Plaintiff United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 179 (“Pipefitters 179”), is a union representing pipefitters in Saskatchewan and is an affiliate of the SFL, with an office at 227 7th Avenue, Regina, SK, S4R 1C6.

32. The Plaintiff Saskatchewan Provincial Building and Construction Trades Council (“Trades Council”) is an umbrella labour organization and represents eleven construction building trade unions in Saskatchewan, with an address at 2301-G, 7th Avenue, Regina, SK, S4R 1C6.

33. The Plaintiffs reserve the right to amend their Claim.

The Defendant

34. The Defendant is the Honourable Don Morgan, Attorney General, on behalf of Her Majesty the Queen in Right of the Province of Saskatchewan, with an address for service at Room 355, Legislative Building, 2405 Legislative Drive, Regina, SK, S4S 0B3.

The SFL and its role in the action

35. The founding convention of the SFL was in 1956. One of its founding purposes was to meet regularly and provide an official voice for organized labour to government on fundamental union principles and policies.

36. The Constitution of the SFL holds that the SFL will promote the enactment of provincial legislation to safeguard and extend free collective bargaining and promote the passage of such other labour and social laws which will provide for social security and welfare for all people.

37. The Constitution of the SFL also holds that the SFL will work to protect and strengthen democratic institutions to secure full recognition and enjoyment of civil rights and liberties. The SFL works to preserve and perpetuate what it describes as the cherished tradition of democracy.

38. In addition to representing its approximately 95,000 members, SFL also advocates for the approximately 25,000 workers who are unionized but not directly affiliated to the SFL and the thousands of workers who do not have union representation.

39. The SFL organizes conferences and workshops on issues of importance and interest to workers such as occupational health and safety, pensions, pay equity, youth issues, anti-racism, Aboriginal struggles, women's issues, globalization and free trade, union organizing, labour law and the environment.

40. The SFL researches, writes and presents briefs setting out the perspective of workers at public hearings, inquiries, commissions, committees of review, and to government departments.

41. The SFL and its credentialed delegates convene annually to debate and pass action resolutions and policy statements on issues of importance and interest to workers. At this annual convention the affiliated unions of the SFL elect members to the SFL Executive Council for two year terms.

42. The SFL supports and participates in coalitions with community groups which are committed to a free and democratic society and the pursuit of social and economic justice.

SFL's contact with the Government

Inadequate Consultations with Affected Labour Community

43. In 1993, the Government of Saskatchewan (the “Government”) sought to amend the *Trade Union Act*, R.S.S. 1978, c. T-17 (the “*Trade Union Act*”). The Government commissioned a report from a committee with a representative of business, Michael Carr; a representative of labour, Hugh Wagner; and a neutral chair and mediator, Ted Priel, Q.C. Both the business and labour representatives had consultation with their labour or employer constituencies and labour or employer legal counsel on the proposed amendments.

44. Just prior to the introduction of Bill 5, one of the soon to be cabinet Ministers Don McMorris, stated during the election campaign that the Government did not see a need for essential services legislation because unions had always been able to resolve such issues between themselves and their employers through free collective bargaining.

45. On December 6, 2007, Larry Hubich met with the Honourable Rob Norris, Minister of Advanced Education, Employment and Labour for an introductory meeting. The meeting lasted approximately 30 to 45 minutes. During the meeting Mr. Hubich asked that the labour movement be consulted prior to the introduction of any legislation that would affect workers. Mr. Hubich offered the services of what he termed the best and brightest experts the labour movement had to offer to discuss any issues in relation to amended labour legislation. The Minister did not discuss his plans for changes to labour legislation and he did not agree to any consultation process.

46. Less than two weeks later, on December 19, 2007, the Government introduced *An Act Respecting Essential Public Services* (“Bill 5”) and *An Act to amend the Trade Union Act* (“Bill 6”), (collectively the “Impugned Legislation”) in the first session of the Twenty Sixth Legislature. To the best of the Plaintiffs’ knowledge, no consultation with the SFL, its affiliates, the Plaintiffs, or any other unions occurred before the introduction of the Impugned Legislation.

47. On or about March 13, 2008, the Plaintiff SFL received documents regarding or relating to the Government's essential services legislation that had been disclosed by the Government pursuant to a Freedom of Information request (the "FOI Disclosure"). The FOI Disclosure included the following documents:

(a) comparisons of essential service systems in other Canadian jurisdictions;

(b) Government "backgrounder" documents which state that workers in Saskatchewan have a right to strike;

(c) draft Government communications strategies including stated intention of need to consult with union and the SFL prior to the introduction of the Impugned Legislation;

(d) email communication prior to the introduction of the Impugned Legislation which states that Peter McKinnon, President of the University of Saskatchewan, will publically support the Government on essential services; and

(e) email communication prior to the introduction of the Impugned Legislation regarding the communications strategy surrounding the Impugned Legislation copied to a lawyer, Kevin Wilson, who regularly represents employers in labour relations matters; and

(f) email communication confirming meetings with Kevin Wilson to discuss content of proposed drafts of the Impugned Legislation.

48. The Government did not notify the SFL, its affiliates, or the Plaintiffs of its intention to introduce the Impugned Legislation.

49. ~~Instead,~~ Following the introduction of the Impugned Legislation the Government announced it would seek what Minister Norris termed "feedback from the policy community". ~~On February 6, 2008, Mr. Hubich met with Minister Norris for between 45 minutes and one hour. Mr. Hubich presented a brief prepared by the SFL analyzing the Impugned Legislation. In introducing the Impugned Legislation, Minister Norris stated that unions have a right to strike and that unions in Saskatchewan did not lose the right to strike.~~

50. On December 20, 2007, on behalf of the health care unions affiliated with the SFL, Mr. Hubich wrote to Minister Norris and the Honourable Don McMorris, the Minister of Health, requesting a meeting to discuss the Impugned Legislation and its effect on health care employees. Mr. Hubich did not receive a reply.

51. The SFL wrote three more letters to Minister McMorris, dated January 25, 2008, March 10, 2008 and April 28, 2008, requesting a meeting between the Minister and the SFL's affiliate unions in health care. The Minister did not respond to these letters.

52. In January 2008, Minister Norris invited the SFL and some of its affiliates to meet individually to provide feedback on the Impugned Legislation. Other unions were invited to provide written feedback on the Impugned Legislation. Several unions, including the construction and trade unions, were not invited to meet with the Government, nor were they invited to provide written feedback.

53. To the Plaintiffs' knowledge, ~~consultation~~ feedback with labour as part of the so-called "policy community" was limited to Minister Norris meeting with the SFL and six trade unions. The SFL and six ~~four~~ trade unions sent in written submissions on the Impugned Legislation.

54. As part of the SFL's submission to the Government regarding the Impugned Legislation, the SFL prepared a brief (the "SFL Brief") analyzing the Impugned Legislation, including the effects of the Impugned Legislation on employees' rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 ("*Charter*").

55. The primary request from the SFL and unions who provided feedback to the Government was to request withdrawal of the Impugned Legislation, due to the lack of consultation prior to its introduction and the inadequacy of the feedback process for trade unions and workers. They asked the Government to hold public, transparent consultations about any proposed labour legislation in the province.

56. On February 2, 2008, the Plaintiff IATSE provided a submission to the Government regarding the Impugned Legislation, including the difficulties it anticipated with mandatory votes for certification.

57. On February 6, 2008, Mr. Hubich and the SFL Communications and Research Officer, Cara Banks, met with Minister Norris and other officials from the Ministry of Advanced Education, Employment and Labour for approximately 45 minutes. Mr. Hubich and Ms. Banks presented and made comments on the SFL Brief analyzing the Impugned Legislation.

58. On February 6, 2008, the SFL wrote to the Premier requesting that the Government refer the Impugned Legislation to the Saskatchewan Court of Appeal, pursuant to the *Constitutional Questions Act*, R.S.S. 1978, c. C-29, to determine the constitutionality of the Impugned Legislation. The Government refused to refer the Impugned Legislation to the Court of Appeal.

59. On February 8, 2008, the Saskatchewan Union of Nurses (“SUN”) provided a submission to the Government regarding the Impugned Legislation. The SUN submission set out its detailed history of voluntarily providing emergency nursing services during any withdrawal of services during labour disputes and its commitment to continue to do so.

60. On February 14, 2008, the Plaintiff GSU provided a submission to the Government regarding the Impugned Legislation. The GSU asked that the Government amend Bill 6 to include a labour relations practitioner review process. The GSU also asked the Government to provide the Labour Relations Board (the “LRB”) with sufficient resources to carry out its new duties under the Impugned Legislation.

61. On February 14, 2008, the Service Employees International Union (“SEIU”) provided a brief to the Government regarding the Impugned Legislation. The SEIU submission detailed the less rights-impairing essential services frameworks in other jurisdictions, including the lack of designation of names of employees and the availability of binding arbitration in other jurisdictions.

62. In February, 2008 the Plaintiff HSAS provided a briefing note to the Government regarding the Impugned Legislation. HSAS submitted that employers may over-designate essential services under Bill 5 to ensure that they are not inconvenienced by job action and that the definition of “health” in Bill 5 was ambiguous.

63. In February 2008, Canadian Union of Public Employees Saskatchewan (“CUPE Saskatchewan”) provided a submission to the Government detailing many concerns regarding the Impugned Legislation. CUPE Saskatchewan recommended an independent committee of labour and employer representatives, along with a neutral chair, review the Impugned Legislation and solicit views. CUPE Saskatchewan also requested the disclosure of the background studies conducted by the Government. CUPE Saskatchewan also provided comparisons of labour legislation in other jurisdictions, demonstrating that the Impugned Legislation had the most significant impact on employees’ rights in Canada.

64. On February 29, 2008, the SFL invited Minister Norris to meet with the SFL Executive Council to discuss the Impugned Legislation. Minister Norris declined the meeting with the SFL.

65. On March 10, 2008, the Saskatchewan Regional Council of Carpenters and Millwrights (the “Carpenters Council”) provided a letter to the Government setting out its concerns regarding the Impugned Legislation. The Carpenters Council requested that the Government engage in a full consultation process regarding the Impugned Legislation.

66. The Government did not address the concerns raised by the SFL and unions after they provided feedback to the Government. The Government did not follow up with the SFL or unions regarding their feedback nor did they solicit additional input from unions.

67. The SFL and unions took out advertisements in newspapers, presented petitions to the Government, wrote letters in newspapers, held rallies, and invited citizens in Saskatchewan to email the Government regarding the Impugned Legislation. In doing so, the SFL and unions asked, *inter alia*, for full consultation to be held over the Impugned Legislation.

68. After the introduction of the Impugned Legislation but before it was proclaimed, District Labour Councils in Regina, Saskatoon, Yorkton, Moose Jaw and Humboldt held public meetings about the Impugned Legislation. The Government was invited to attend, but no members of the Government attended any of the public meetings.

69. At second reading of the Impugned Legislation on April 15, 2008, during committee, minor changes were made to Bill 5. The changes were not substantive in nature, nor did they address the concerns and recommendations criticisms of the SFL, its affiliates, or other unions. No changes were made to Bill 6.

70. On May 14, 2008, the Impugned Legislation received royal assent. Bill 5 became the *Public Service Essential Services Act*, S.S. 2008, c. P. 42-2. Bill 6 became *The Trade Union Amendment Act*, S.S. 2008, c. 26.

71. On July 10, 2009, the Lieutenant Governor proclaimed the *Public Service Essential Services Regulations*, R.R.S. c. P-42.2 Reg. 1 (the “Regulations”).

The nature of the Impugned Legislation

72. The Impugned Legislation is subject to the same rules, policies, practices, procedures, interpretation principles and powers listed in the *Trade Union Act* and *Sask Reg 163/72* as amended by *Sask Regs. 25/81* and *104/83*.

73. The Impugned Legislation forms part of the law administered by the same administrative tribunal, the LRB, that is responsible for all laws related to the rights included under the *Trade Union Act*, the *Health Labour Relations Reorganization Act*, S.S. 1996, c. H-0.03 and the *Construction Industry Labour Relations Act 1992*, S.S. 1992, c. C-29.

74. The Impugned Legislation was introduced, publicly defended, researched, studied and questioned in the Legislature as a package by the Government.

75. The Impugned Legislation removes and/or restricts rights which have historically been fundamental aspects of one statute, the *Trade Union Act* and recently, its supplement, the *Construction Industry Labour Relations Act 1992*.

76. The Impugned Legislation, despite being enacted as two separate pieces of legislation, is interrelated in the effect it has on unions and unionization in the province of Saskatchewan.

77. The number of new certifications issued by the LRB has declined from an average of 54 certifications per year over the last five years to 16 in the year since the Impugned Legislation was enacted.

Impugned provisions of Bill 5

78. As a whole, Bill 5 breaches sections 2(b), 2(c), 2(d), 7 and 15 of the *Charter* and is not saved by section 1. Further, it does not accord with international law, including international treaties and international customary law, and it results in a denial of natural justice and is contrary to the rule of law.

Essential services legislation interferes with the Plaintiffs' right to conduct job action as part of collective bargaining

79. The ability to engage in limited and full work stoppages, job actions, and strikes in order to place economic pressure on employers to conclude fair collective agreements is part of the right to bargain collectively and is a fundamental right of unions and workers recognized in common law, international law, and protected under the Charter.

80. The Plaintiffs have relied upon work stoppages, including both job action and the threat of job action in collective bargaining as a core associational activity. Bill 5 unconstitutionally interferes with the Plaintiffs' ability to engage in work stoppages, strikes, and job action or the threat of job action in collective bargaining.

81. The Plaintiffs have relied on picketing, leafleting and other expressive activity in collective bargaining. Bill 5 unconstitutionally interferes with the Plaintiffs' ability to engage in picketing, leafleting and other expressive activity during collective bargaining.

~~Bill 5 grants unprecedented, unilateral powers to public employers to designate essential services and set essential service staffing levels during labour disputes.~~

Essential services negotiations interfere with Plaintiffs' right to free collective bargaining

82. The ability of unions to engage in free collective bargaining as relative equals in bargaining power is part of the right to collective bargaining and is a fundamental right of unions and employees recognized in common law, international law, and protected under the Charter.

83. ~~The union~~ Many of the Plaintiffs and other unions in the province of Saskatchewan have negotiated and provided adequate emergency services during labour disputes without endangering public health and safety or lives; without causing the destruction or serious deterioration of machinery or premises, without causing serious environmental damage; and without disruption to the courts.

84. Bill 5 unconstitutionally interferes with free collective bargaining by requiring unions and public employers to attempt to bargain an essential services agreement at the beginning of the collective bargaining process. Bill 5 also unconstitutionally interferes with free collective bargaining by granting public employers unprecedented, unilateral powers to designate essential services, determine classifications to provide essential services, set the numbers and names of employees required to provide essential services, and otherwise limit essential services employees' ability to engage in any activity connected with job action, including picketing, in the event that an essential services agreement cannot be reached.

85. The combined effects of the following provisions of Bill 5 fundamentally alter the labour relations framework in Saskatchewan, and substantially remove the ability of the union Plaintiffs to engage in effective and meaningful collective bargaining.

Impugned provisions of Bill 5 specifically

86. In addition or in the alternative, the following sections of Bill 5 violate one or more of sections 2(b), 2(c), 2(d), 7 and 15 of the *Charter* and are not saved by section 1. Further, the following provisions of Bill 5 do not accord with international law, including international treaties and international customary law, and it results in a denial of natural justice and is contrary to the rule of law.

87. “Public employer” is broadly defined in section 2 of Bill 5 to include, for example, universities and Crown corporations. The Government may also prescribe “any other person, agency, or body, or class of persons, agencies, or bodies” that are public employers and therefore covered by Bill 5, without the requirement for legislative debate or review. Bill 5 provides for a greater variety of employers to be essential than any other jurisdiction in Canada including post-secondary educational institutions, rural and urban municipalities, and Crown corporations.

88. The inclusion of Crown corporations under the definition of “public employer” in section 2 (1)(ii) of Bill 5, includes the Saskatchewan Gaming Corporation (“SGC”), Regina and Moose Jaw Casinos, Information Services Corporation, Saskatchewan Government Insurance (“SGI”), Saskatchewan Transportation Company, and Saskatchewan Liquor and Gaming Authority (“SLGA”)

89. “Essential services” are broadly defined in section 2(c)(I) of Bill 5. ~~to include services necessary to prevent danger to “health and/or safety” and “serious deterioration of machinery, equipment or premises” without further definition.~~

90. Section 6(2) of Bill 5 states that an employer will advise the union of those services that are essential. There is no recourse in Bill 5 for a union to challenge an employer’s designation and/or definition of essential services.

91. Section 6(3) of Bill 5 states that the “prescribed” services are the essential services for the purpose of the essential services agreement. The definition of “prescribed” in section 2 of Bill 5 is those services prescribed by the Regulations. “Prescribed” services were and may therefore be included in Bill 5 without the requirement for legislative debate or review. Prescribed services cannot be bargained and the imposition of the Regulations overrides existing collective agreements.

92. Section 7(1) sets out the mandatory requirements of an essential services agreement, including a requirement to name individual employees who must work during the work stoppage and cannot participate in strike activities.

93. Section 7(1)(a) creates an exclusion from the essential services negotiation process for the largest employer in Saskatchewan, the Government, who does not have to negotiate the terms of an essential services agreement with the unions representing its employees.

94. Sections 7(1)(d) and 9(2)(c) of Bill 5 permit employers to name specific workers required within classifications to work during work stoppages ~~under essential services agreements~~. These provisions permit employers to target union stewards, union leaders or executive members, and restrict the ability of the unions to manage job actions and work stoppages.

95. Section 7(2) of Bill 5 states that the number of essential services employees in each classification is to be made without regard to the availability of others to perform those tasks, ~~impacting~~ limiting the ability of unions ~~Plaintiffs~~ to engage in job action.

96. Section 9(2) of Bill 5 permits a public employer to issue an essential service notice if an essential services agreement is not reached, that includes classifications and number of employees required to provide essential services. Section 9(2) also permits a public employer to name specific employees as essential. This provision removes any incentive for employers to negotiate fair essential services agreements.

97. Sections 9(4), 9(5) and 9(6) of Bill 5 permit a public employer to serve a further essential service notice, if the public employer determines that more employees are required to maintain essential service levels. Such additional notice may ~~must~~ also name employees who must work. ~~Notably, this provision does not contain the same restriction as section 9(2)(c), which requires that named employees must be within a particular classification.~~ This further provides employers with the ability to target union leaders and organizers as essential services employees, requiring them to work, instead of managing a job action or work stoppage, which will restrict the ability of the unions to manage job actions.

98. Section 10 of Bill 5 permits unions to apply to the LRB to vary the number of essential services employees in each classification to maintain essential services, but does not guarantee unions a hearing, a timely decision, nor permit unions to challenge the designation of particular services and classifications as essential services.

99. Section 11 of Bill 5 permits an employer or trade union to apply to vary an order made under section 10, meaning that no order under section 10 is final and thus reviewable.

100. Section 12 (2) of Bill 5, authorizes the LRB, at the unilateral request of an employer, to issue an order increasing the number and names of individual employees who must work during any work stoppage.

101. Section 14 of Bill 5 provides that no essential services employee shall participate in a work stoppage, which is defined as a “strike” within the meaning of section 2 (k.1) of the *Trade Union Act*. Section 14 prohibits limiting the abilities of workers to engage in even limited work stoppages, including job action and thus impacting the ability of employees and the unions to engage in work stoppages, job action, or threaten work stoppages as part of collective bargaining.

102. Under section 15 of Bill 5, unions are prohibited from authorizing, declaring, or causing a work stoppage of essential services employees.

103. Section 16 of Bill 5 states that no person or trade union shall impede or attempt to impede any essential services employee from complying with Bill 5, which limits the ability of unions to engage in lawful picketing if essential service employees are even delayed in crossing picket lines.

104. Section 17 imposes restrictions on individuals and unions from communicating with workers about work stoppages, including strikes and job actions to the extent that they conflict with Bill 5.

105. Section 18 of Bill 5 requires essential services employees to perform the duties of his or her employment, including providing non-essential services, which limits the ability of the unions to engage in job action or work stoppages.

106. Section 20(2)(a) of Bill 5 permits fines against unions of \$50,000 and \$10,000 per day for violating Bill 5.

107. Section 20(2)(b) of Bill 5 permits fines against workers of \$2,000 and \$400 per day for violating Bill 5.

108. Section 21 of Bill 5 permits the Defendant to further restrict or remove the rights of employees and unions, already restricted or removed by Bill 5, without notice, discussion or consultation with unions through the ability to define or enlarge or restrict meanings under Bill 5 by regulation, and thus without legislative debate or review. ~~designate any service provided by the Defendant as essential and add other provisions to essential services agreements.~~

109. Section 4 of Bill 5 provides that Bill 5 specifically overrides other “laws, collective bargaining agreements, ~~arbitration~~ arbitral or other awards or decisions, or any obligation, rights, claims, agreement or arrangements of any kind.”

General Interference with Plaintiffs’ Rights under Bill 5

110. The combined effects of Bill 5 place substantial restraints upon unions, employees and the Plaintiffs to engage in effective job action, or work stoppages, which is a necessary component of meaningful collective bargaining. This restriction, on the rights of unions and their members, substantially impairs their ability to negotiate fair collective agreements on behalf of workers.

111. Some unions and thousands of individual employees have lost the right to engage in work stoppages and participate in the associational and expressive activities of the union.

112. Bill 5 overrides fair, free and voluntary essential services agreements such as protocols, memoranda of understanding and other alternative arrangements between unions and employers for the provision of emergency services. Under those agreements, emergency services have been provided historically to the public by unions, including Plaintiffs HSAS, SGEU, RWDSU, CEP and IBEW.

113. In the 25 years prior to the introduction of the Impugned Legislation in Saskatchewan, 95.5 percent of collective agreements for the public sector were settled without a work stoppage and without essential services legislation.

114. The Plaintiffs certified to public employers have experienced increased costs in collective bargaining through the requirement to attempt to negotiate essential services agreements prior to commencing bargaining a collective agreement; and as a result of this interference essential services negotiations and designations by employers impinge on free collective bargaining.

115. As a result of Bill 5, the Plaintiffs have experienced interference with their right to free collective bargaining.

Definition of public employer

116. Pursuant to section 6(1) of Bill 5, the Plaintiff URFA was required to negotiate an essential services agreement with the employer, the University of Regina (“U of R”). URFA took the position that none of the services performed by its members were essential. The U of R agreed and the parties have included a provision in their collective agreement providing that no URFA members are presently performing an essential service. The collective agreement further provides that URFA and the U of R will negotiate the provision of any essential service in the event of a work stoppage.

117. The Plaintiff SGEU represents employees at various post secondary institutes in Saskatchewan which include universities, colleges and technical institutes. SGEU members perform similar functions at each institute. Some institutes are required by Bill 5 to negotiate an essential services agreement while others are not.

118. The Plaintiff SGEU represents the Academic Bargaining Unit (instructors, librarians, instructor aides and educational counsellors) and the Professional Services Bargaining Unit (administrative assistants, accountants, shopkeepers, registration, cafeteria employees etc.) at the Saskatchewan Institute of Applied Science and Technology (“SIAST”). Though SIAST has never required the provision of essential services in past job actions, SGEU’s members were required by Bill 5 to negotiate an essential services agreement in the Fall of 2008. Both SIAST and SGEU agreed that none of SGEU’s members performed essential services, as defined by Bill 5.

119. During a four-week work stoppage in 2005, the Plaintiff CUPE 7 and its members were not asked by the Employer the City of Regina to perform any essential services, nor was there any danger to safety, life, property or the environment as defined by Bill 5 during the work stoppage.

120. None of the services currently provided by the Plaintiff CUPE 7, if ceased during a work stoppage, would pose a threat to life, health, or safety; cause the destruction or serious deterioration of machinery or premises; cause serious environmental damage; or disruption to the courts.

121. Because the City of Regina is a public employer under Bill 5, the Plaintiff CUPE 7 is required to expend considerable union resources paying for the wages of union representatives to attend essential services negotiations. CUPE 7 must also interrupt the process for collective bargaining to address the Bill 5 essential services requirements.

122. The members of the Plaintiff SGEU who work for the SLGA are required to negotiate an essential services agreement. In the history of labour disputes between SGEU and SLGA there has never been a request by the SLGA for the SGEU to provide essential services. None of the services provided by SGEU members at SLGA are essential.

123. The Plaintiff RWDSU represents employees in the tourist industry, such as card dealers and doorpersons at Moose Jaw Casino and food and beverage employees at Casino Regina. None of the work of RWDSU members falls under the definition of “essential services”, as defined in Bill 5. During the past eight years, members of the RWDSU have initiated a work stoppage at the Casino Regina on two separate occasions. The employer did not request essential services be provided on either occasion.

124. The Plaintiff IATSE represents stage employees at the Casino Regina show lounge. None of this work falls under the definition of essential services in Bill 5 and these employees have never engaged in a work stoppage.

125. The Plaintiff COPE 397 represents insurance employees working for SGI. None of the work performed by COPE 397 employees falls within the definition of essential services under Bill 5. COPE 397 members have not engaged in a work stoppage for over sixty years.

Unlawful definition and designation of essential services

126. The Saskatchewan Association of Health Organizations (“SAHO”) is presently negotiating collective agreements with five unions (including health care employees from RWDSU, SGEU, SEIU-West, CUPE and HSAS), who are required to bargain essential services agreements under Bill 5.

127. On February 25, 2009, SAHO stated that it defines the word “health” under section 2 of Bill 5 according to the definition of the World Health Organization which is “a state of complete, physical, mental, and social well-being and not merely the absence of disease or infirmity.”

128. On September 2, 2009 the Saskatchewan Watershed Authority (“SWA”) proposed an essential services agreement to the Plaintiff CEP which included the individual designation of named employees in classifications to provide essential services during work stoppages. On September 29, 2009, the The Plaintiff CEP proposed an essential services protocol which did not designate individual employees, but would require agreement on essential work functions and staffing numbers, and a three person panel to determine work function or staffing level disputes. The CEP proposal required the CEP to ensure required staffing was provided. SWA rejected this proposal.

129. The Saskatchewan Water Corporation (“SWC”) proposed an essential services agreement to the The Plaintiff CEP which included the designation of named employees in classifications to provide essential services during work stoppages. On October 30, 2009, the CEP proposed an essential services protocol which did not designate individual employees, but would require agreement on essential work functions and staffing numbers, and a three person panel to determine work function or staffing level disputes. The CEP proposal required the CEP to ensure required staffing was provided. SWC rejected this proposal.

130. On or about 2009, employers such as SLGA, Casino Moose Jaw, and SWA, have designated employees responsible for the maintenance of boilers as essential.

131. In negotiations regarding essential services in 2009, pursuant to section 6(1) of Bill 5, the employer Regina Qu’Appelle Health Region presented the Plaintiff RWDSU with a list of proposed essential services employees, designating 124 of 125 laundry employees as essential.

132. In the 2009 round of collective bargaining SAHO has designated approximately 75% of full-time union health care workers employed by its member employers as essential.

133. The Plaintiffs have experienced employers who table essential services agreements which provide for the employer to unilaterally escalate the number of employees in a classification during a dispute. SAHO publically announced that employers have the right to and will escalate the number of designated employees during a work stoppage if the work stoppage is becoming effective.

134. In the case of the Plaintiff HSAS, 5 Hills Health Region has proposed an essential services agreement which would have 100 percent of employees designated as essential within three weeks of a labour dispute.

135. The Plaintiffs have also experienced employers designating positions which are currently vacant, positions held by workers on leave, and who are on long-term disability and Workers Compensation Leave, and on layoff as essential.

136. The SEIU-West has documented 2,200 instances in which health care employers have designated more employees required to work during a work stoppage than currently assigned to work regularly.

Impact on collective bargaining

137. The experience of the Plaintiff SGEU is that pursuant to section 6(1) of Bill 5, employers require negotiation of essential services agreements prior to commencing collective bargaining towards a collective agreement. The Plaintiff SGEU has been forced to spend considerable resources engaging in essential services agreement negotiations, instead of collective bargaining, thereby increasing the cost of collective bargaining.

138. Notwithstanding the requirement under section 6(1) of Bill 5 for public employers and unions to attempt to negotiate an essential services agreement, on or about late 2008 or early 2009, employer health regions refused to comply with the requirement under Bill 5 to designate the classification and names of employees providing services that are designated as essential. Instead, health authority employers took the position that they could designate services, classifications and names of employees as essential unilaterally. The Plaintiff HSAS sought judicial review of the employer, Regina Qu'Appelle Health Region's failure to follow Bill 5 and reached a consent order requiring compliance with Bill 5. None of the other health authorities have similarly complied with the requirements of Bill 5.

139. SAHO proposed a cumbersome and time intensive process to the Plaintiff HSAS for determining essential services classifications under Bill 5 that for each job classification that might be considered essential, an employer and union representative would travel throughout the province to investigate the job functions and duties at approximately 150 health facilities for each classification.

Free collective bargaining requires the ability to engage in effective work stoppages

140. In the past five years the Plaintiff ATU 588 has relied on the threat of a work stoppage in 2008, and an actual work stoppage in 2005 to conclude collective bargaining.

141. The experience of the Plaintiff CEP is that work stoppages are an essential component of collective bargaining.

142. The experience of the Plaintiff CUPE 7 is that employer, during collective bargaining on or about 2005, the City of Regina, did not alter its position in bargaining until the completion of four weeks of a work stoppage by CUPE 7.

143. Historically a significant part of the effectiveness of a work stoppage and collective bargaining for the union Plaintiffs has been the reliance on management and other non-bargaining unit employees performing the work union employees normally perform.

144. The additional economic cost to employers and the additional human resources required by employers to continue to operate during a work stoppage are part of the *quid pro quo* of the economic cost to workers and unions of a work stoppage.

145. The experience of the union Plaintiffs is that out of scope or non-union employees and managers were used to perform the work the employer considered essential during a strike. Under Bill 5, employers are required to calculate the designated workers required to provide essential services without considering the availability of others during a work stoppage. Employers have stated in writing that they will not and are not considering the use of management, contract workers, replacement workers, or volunteers when making designated lists.

No binding arbitration for those who have lost right to strike

146. The Government concedes that Bill 5 overrides the voluntarily negotiated essential services between it and the Plaintiff SGEU in arbitration proceedings before Arbitrator Colin Taylor in the Spring of 2009. The time and money spent by SGEU in the voluntary essential service process has thus been lost.

147. The employer Regina Qu' Appelle Health Region has designated 124 of 125 of the Plaintiff RWDSU employees in hospital laundry as essential but has not proposed either binding arbitration or any form of compensation to remedy the effective loss of the right to strike.

Impugned Provisions of Bill 6

148. The ability of workers to organize to engage in collective activities in pursuit of fair terms and conditions of employment is a fundamental right of unions and workers recognized in common law, international law, and protected under the *Charter*.

149. As a whole Bill 6 breaches sections 2(b), 2(c), 2(d), 7 and 15 of the *Charter* and is not saved by section 1. Further, it does not accord with international law, including international treaties and international customary law, and it results in a denial of natural justice and is contrary to the rule of law.

150. The *Trade Union Act* has governed the organization of workers and unions in the Province since 1944. It is the fundamental legislation which protects the rights of unions and workers.

151. The changes to the *Trade Union Act* in Bill 6 fundamentally alter the labour relations framework in Saskatchewan, and substantially impair the ability of the union Plaintiffs to organize workers. In particular, these changes are contrary to the historical and stated purpose of the *Trade Union Act* as stated in the title and section 3.

Interference with the right of employees to join a trade union

152. Bill 6 interferes with free collective bargaining by impinging on the right of employees to join a trade union of their choice and to be free from any ability of employers and the Government to interfere with the exercise of those rights.

153. The elimination of automatic majority card certification and the imposition of mandatory certification votes violates workers' and unions' freedoms under the *Charter*.

Impugned provisions of Bill 6 specifically

154. Section 3(1) of Bill 6 amends the *Trade Union Act* to require secret ballot votes when a union applies for certification of a bargaining unit with the support of at least 45% of the eligible employees. Even if a union can demonstrate that all workers support a union, there must still be a vote. Bill 6 does not set any time limit by which a representation vote must be held.

155. Section 3(1) of Bill 6 amends the *Trade Union Act* to increase the required level of demonstrated support before a certification application can be filed from 25% to 45%, making it more difficult for unions to organize workers.

156. Section 3(1) of Bill 6 amends the *Trade Union Act* to decrease the length of time that union membership cards are valid from six months to 90 days, making it more difficult for unions to organize workers.

157. Section 6 of Bill 6 amends the *Trade Union Act* to state that nothing in the *Act* precludes an employer from communicating facts and its opinions to its employees. This provision greatly expands the ability of employers to interfere with union efforts to persuade employees to join or participate in the activities of trade unions.

158. The deletion of section 6(2)(c) of the *Trade Union Act* permits the LRB to ignore the already certified union of choice of the workers and interferes with their rights under the *Trade Union Act*.

159. Section 7 of Bill 6 introduces a 90-day time limit on filing unfair labour practice complaints under the *Trade Union Act*. This new time limit restricts the ability of unions and workers to bring complaints forward.

160. Section 11 of Bill 6 repeals section 33.3 of the *Trade Union Act* which limits collective agreement terms to three years. The removal of this restraint permits employers to seek lengthy collective agreements which prevents unions and workers from changing terms and conditions of employment for years and responding to social, economic, and legislative changes.

161. Collectively and individually, the above noted changes greatly hinder the ability of the union Plaintiffs to organize workers and defend workers and unions against improper activities of employers and individually and collectively violate the *Charter*, natural justice, the rule of law and customary international law.

162. As a result of Bill 6, the Plaintiffs have experienced the following specific interferences with their right to free collective bargaining and their right to organize into unions of their choice.

Deterioration of the labour relations environment

163. The increased scope for communications given to employers under Bill 6 diminishes the protections that unions and employees have against anti-union activities and coercive communications or intimidating conduct by employers. Removing limits on employer communications encourages employer interference with the administration of trade unions, including interference with representation votes and organizing drives and therefore prevents employees from attaining the full benefit of their rights to collective bargaining under sections 2 (b), 2(c) and 2(d) of the *Charter*.

164. The experience of the Plaintiff UNITE/HERE is that since the introduction of Bill 6, the maintenance of collective bargaining relationships with employers has become more difficult. For example, Unite/Here had a good working relationship with the employer, Super 8 Motel in Moose Jaw. After the introduction of the Impugned Legislation, UNITE/HERE members have experienced harassment and bullying by this employer, increasing the cost of administering the trade union.

165. The experience of the Plaintiff CEP is that since the introduction of Bill 6 the labour relations environment has deteriorated. CEP, Local 721-G experienced violence on picket lines at the Mercury Graphics work stoppage in September 2008. A CEP member, Elaine Mann, was assaulted by a manager by striking her with his vehicle four times on September 9, 2008. Mercury Graphics has engaged in other intimidation tactics, including threatening, staring at, photographing and insulting picketers. This increases the cost of addressing a work stoppage. This level of intimidation at a lawful picket line was not common prior to the introduction of Bill 6.

166. The experience of the Plaintiff Steelworkers is that since the introduction of Bill 6, the labour relations environment has deteriorated. During the Potash Corporation strike in the Fall of 2008, the employer attempted to undermine the exclusive bargaining agent role of the Union by communicating directly with the Union's members, sending them letters which were misleading, inaccurate and incomplete regarding the parties' collective bargaining. This level of employer interference in collective bargaining was unusual prior to the introduction of Bill 6 and increases the cost of administering the trade union during a work stoppage.

167. The Plaintiff Steelworkers also encountered employer interference during an organizing campaign at Sears in Regina in the Spring of 2008. This level of employer interference in an organizing campaign was unusual prior to the introduction of Bill 6 and increases the cost of administering the trade union during organizing campaigns.

Loss of card certification interferes with employees' right to associate in a union and express their intention to join a union

168. The provisions of Bill 6 encumber the certification process, thereby interfering with employees' expression and free choice regarding their intention to join or refuse to join a union; and impose significant procedural delays and increased cost in the certification process.

169. The procedural delay in the certification process allows for increased intimidation and coercive involvement by employers in the certification process, thereby interfering with employees' right to express their democratic decision over unionization and their associational right to join a union. Administrative and procedural expediency are crucial at the certification stage of collective bargaining as employees are most vulnerable to employer reprisal prior to certification. Impediments to timely voting procedures obstruct employees from accessing their collective bargaining rights.

170. The experience of the Plaintiff UBCJA 1985 has been that organizing is more difficult and therefore more costly since the introduction of Bill 6. Prior to the introduction of Bill 6, certifications took approximately two weeks and were issued without a vote when certification cards were produced.

171. In August 2008, the Plaintiff UBCJA 1985 applied to certify Raven Construction. It took the LRB over three months to conduct a vote and issue a certification order.

172. In August 2008, the Plaintiff UBCJA 1985 applied to certify a group of three employees at Thyssen Krupp Safeway Inc. It took the LRB over three months to hold a vote from the date of application.

173. In October 2008, the Plaintiff UBCJA 1985 applied to certify Kamtech Services Inc. It took the LRB approximately seven weeks to conduct a vote and issue a certification order.

174. The experience of the Plaintiff UBCJA 1985 is that the protracted certification process provides employers with a far greater opportunity to improperly influence their employees. Employers have access to all employees from the time they learn of an application for certification to the time a vote is ordered. The UBCJA 1985 can only try to communicate with employees once they have left the job site. The UBCJA 1985 does not have enough resources to refute or counter misleading or anti-union claims made by an employer over an extended period of time.

175. The experience of the Plaintiff COPE 397 is that where employers strongly oppose union certification, timely votes for certification are vital to union organizing. Employers can use their position of authority to intimidate employees and terminate known supporters of the union.

176. On or about 2009, the experience of the Plaintiff HSAS was that employees at the employer Gravelbourg EMS were concerned that their employer would learn of the union's organizing drive before the certification vote.

177. The experience of the Plaintiff Ironworkers 771 is that card-based certification in the construction industry was a highly effective method for allowing employees to freely express their choice to join or not join a trade union. The construction industry tends to have a transient workforce. Delaying the certification process can result in an employee being out of province or generally unreachable for organizing a vote to join a union.

178. In December 2008, the Plaintiff Ironworkers 771 attempted to seek a certification for six ironworkers with Les Structures De Beauce Inc. working in Humboldt. The employer voluntarily signed a collective agreement and all employees signed union membership cards. The LRB did not proceed with a vote for six weeks during which time the employees left the province to work on other jobs.

179. The experience of the Plaintiff Steelworkers is that following the introduction of Bill 6 organizing became more difficult and therefore most costly. In 2008, the Steelworkers began an organizing campaign at Sears in Regina. Following the start of the campaign, Sears began to interfere with the organizing campaign. The combined effect of the uncertainty around the availability of automatic certification when Bill 6 passed and the intimidation by Sears interfered with the organizing campaign.

180. The experience of the Plaintiff UBCJA 1985 has been that employers opposed to unionization target employees who support the union. In the construction industry, where there are often only a few employees at a given job site, employers can more easily interfere with the certification process by targeting employees.

181. The experience of the Plaintiff COPE 397 in Alberta has been that holding certification votes within a short period after the filing of a certification application gives employers little opportunity to intimidate employees and generally interfere with organizing campaigns. Further, increased delay in holding a certification vote may decrease union support in the face of widespread anti-union tactics on the part of the employer.

182. The experience of the Plaintiff Steelworkers organizing in British Columbia is that requiring a vote for certification has a chilling effect on organizing. Prior to 2001, British Columbia had a system of automatic certification, which was then eliminated in 2001. Under the mandatory vote system in BC, Steelworker organizers experienced that employees were less likely to sign membership cards. Steelworker organizers experienced employee reluctance to sign certification cards because they stated that they were concerned that when votes are held on employer premises with management in attendance voters may be identified as union supporters.

183. In British Columbia, the average annual number of non-unionized employees who became included in new certifications issued by the British Columbia LRB during the period 1994-2000, when there was automatic certification with a threshold number of membership cards signed, was 8,762. The average annual number of non-unionized employees included in new certifications issued by the British Columbia LRB during the period 2002-2004, when automatic certification was replaced by mandatory vote, was 1,739.

184. The experience of the Plaintiff Steelworkers organizing in British Columbia is that even during a 10-day period between the application for certification and a vote, employer interference can occur. Steelworker organizers have experienced that any delay before a vote increases the risk of interference by the employer and corresponding erosion of support from the employees.

185. The experience of the Plaintiff Steelworkers organizing in Manitoba, where there is automatic majority card certification, is that the certification is faster and there is less opportunity for employer interference and intimidation with organizing campaigns. As a result, the unionization rate in Manitoba, is higher than in other jurisdictions without automatic majority card certification.

186. The experience of the Plaintiff IATSE and its Locals is that mandatory certification votes and delays in the certification process have made organizing in the film and television industry more difficult. Presently, production costs may exceed one thousand dollars per minute and any distractions during the filming process, such as a supervised, on-site certification votes, can be both disruptive and incredibly costly.

187. The experience of the Plaintiff IATSE 295 is that projects in the television and film industry are short-term. Even a slight delay may jeopardize the certification of a production company and thwart the employees' free choice to join a union. During a certification drive to unionize Lullaby Productions Incorporated, IATSE 295 filed an application on March 20, 2009. Included in this application was the schedule for the production, which showed work would cease on April 22, 2009. The LRB scheduled a hearing on April 14, 2009. The hearing was cancelled because it was uncontested. The LRB issued a Direction for Vote Order on April 23, 2009, one day after the production had completed. On May 4, 2009, the LRB contacted IATSE 295 to schedule a vote, at which point the LRB was reminded that the work had finished. Consequently, the LRB dismissed the application.

188. The Plaintiff IATSE 295 also conducted a certification drive for the employees of the television production *Little Mosque on the Prairie*. 100% of the employees of this production signed union cards. After IATSE 295 filed an application, the LRB sent two letters to IATSE 295 on the same day: one stating a hearing was going to be scheduled and another stating the hearing was cancelled. Although the letter cancelling the hearing was written before the letter scheduling the hearing, the letter cancelling the hearing arrived at IATSE 295's offices last. As a result, IATSE 295 did not attend the hearing. The LRB held an in-camera meeting and summarily dismissed the application for certification.

189. The experience of the Plaintiff Pipefitters 179 has been that organizing under Bill 6 has become more difficult and therefore more costly. The LRB has refused to certify Pipefitters 179 to represent employees of employers on short-term, project-based work.

190. The Plaintiff Pipefitters 179 has found that both procedural delays and administrative delays by the LRB pose real and substantial barriers to certification. The Pipefitters 179 attempted to certify employees of Pace Industrial Inc. working on the construction of a refrigeration plant in June of 2009. The two affected employees signed certification cards and the Pipefitters 179 submitted an application for certification on June 9, 2009. As the certification was uncontested the hearing was cancelled, but a vote was not held. On October 22, 2009, four months after the date of application, the LRB advised Pipefitters 179 that the certification application would be dismissed without a vote.

191. The Plaintiff Pipefitters 179 must now reorganize Pace Industrial Inc. again, if and when it sets up operations in Saskatchewan. This unnecessarily drains the union of the scarce funds and resources required to organize employees.

192. It is the experience of the Plaintiff Pipefitters 179 that the LRB has procedural delays which allow employers to increase the workforce before the certification vote. When the Pipefitters 179 filed its application for certification on June 9, 2009, the LRB held that the date for determining which employees were eligible to vote were those that were working on June 24, 2009. Furthermore, this notice was issued on July 23, 2009.

90-Day Sunset on Union Cards and interference with the collective bargaining right to join an union

193. Shorter union card validity makes organizing more difficult and costly. Unions spend a great deal of resources tracking down people and providing information about the process of unionization to interested employees. Unnecessary impediments detract organizers from this task and in some instances may deprive employees of their fundamental right to choose whether or not to join a trade union.

194. The experience of the Plaintiff COPE 397 is that having union membership cards that are only valid for 90 days instead of six months, makes organizing more difficult and therefore more costly. The expiration of union cards after 90 days unnecessarily impedes the process of unionization and expends valuable union resources trying to track down employees to re-sign cards.

Employer Free Speech and interference with collective bargaining rights

195. Employers have a significant influence on employees' working lives, through control of their work and daily duties, payment of wages, and access to personal information.

196. Removing restrictions on employers from exploiting this unique position to deter, intimidate and confuse employees seeking to bargain collectively, substantially interferes with employees' rights to organize and administer their trade union.

197. The experience of the Plaintiff COPE 397 is that broadening the scope of permissible communication between employers and their employees relating to unionization increases employer interference.

198. The experience of the Plaintiff Steelworkers is that employers can severely undermine the union's administration of its affairs through direct communication with members, particularly during organizing and negotiating a collective agreement.

199. The experience of the Plaintiff Steelworkers organizing throughout Western Canada is that employers often interfere with organizing campaigns in an attempt to dissuade employees from joining unions, or in the case of votes, from voting to join unions.

200. The experience of the Plaintiff Steelworkers in negotiating collective agreements is that employers can undermine the union's administration of the collective bargaining process through direct communication to union members.

201. While the Plaintiff Steelworkers were negotiating to renew a collective agreement with the employer, PotashCorp. in 2008, PotashCorp undermined the union's administration of the collective bargaining process through direct communication with the union's members. After the union commenced a strike, PotashCorp. sent misleading letters, with selective and incomplete information on the progress of negotiations, directly to union members. Because of the incomplete picture offered by the PotashCorp., many employees were left wondering why they were undergoing considerable financial hardship during the strike and took the position that the union had misled them. The Steelworkers had to spend considerable time, resources and energy responding to inquiries following PotashCorp.'s direct communication with union members.

202. The experience of the Plaintiff CEP is that employers are emboldened by their broadened ability to communicate directly to employees under Bill 6 and will use this ability to mislead, threaten and intimidate CEP locals and their members. When negotiating with the employer, Mercury Graphics in early 2008, Mercury Graphics threatened to shut down its business, it intimidated union members and sent offers of employment to individual members that were not tabled during negotiations.

203. When the Plaintiff CEP Local 911 bargained with the employer, ISM Canada, ISM Canada communicated incomplete and misleading information about the process of negotiations to the union's members. This fuelled speculation and rumour among the union's members that the negotiating committee was somehow hiding information or acting in a manner inconsistent with its collective bargaining role.

204. It is the experience of the Plaintiff HSAS that employers, in their unique position of authority over the employees, have a special ability to interfere with the union's administration of the bargaining unit. For example, shortly after HSAS filed an application for a first collective agreement, with the employer Canadian Blood Services, on April 18, 2008, the director of human resource operations sent a letter to each of the employees that suggested employees within the union would not receive any beneficial terms and conditions of employment, while those employees outside of the union, who did not support the union, would receive a pay raise.

Interference with the right to organize limits the role of unions and their activities

205. A fundamental purpose of collective bargaining is to offer a process for pursuing terms and conditions of employment to employees as a collective not available to employees individually. In addition, the collective activities of trade unions offer individual employees the opportunity to express a collective position on issues beyond their terms and conditions of employment, such as social, economic, and political issues. The ability of employees, through unions, to engage in these expressive, associational and assembly activities is limited through the interference with the employees' ability to join unions, and the unions' ability to administer the activities of unions.

206. Unions and the SFL play a role in encouraging and organizing debate about labour standards, economic, social, and political issues. The SFL organizes the expression of union members through the development of submissions and the presentation of these submissions to Government.

207. The SFL further advances the interests and perspectives of its members through organized and concentrated lobbying efforts. For example the SFL meets with and makes recommendations annually to the Minister of Finance prior to the presentation of the budget.

208. The SFL also facilitates advanced and continuing education on topics important to working people and the general public at large. This includes subjects directly related to the workplace such as occupational health and safety awareness to young workers and students, representing the most at-risk demographic to workplace injury. The educational topics may touch on areas relevant to all citizens such as racism, homophobia, women's rights, pay equity, Aboriginal struggles, human rights, poverty, corporate globalization, free trade, the environment, the Wheat Board, fair trade and peace.

209. The SFL also provides resources or financial support to citizens, groups or organizations not connected to labour. The SFL has provided extensive resources to anti-poverty groups, contributed financially to start-up community newspapers, donated to charities such as the United Way and raised money to provide hay for farmers during drought years.

210. The Plaintiff UBCJA 1985 plays a significant role in the construction industry by providing training for journeymen carpenters and millwrights. There are particular sub-trades, such as scaffolding, for which training is not provided at any institution in Saskatchewan and only through UBCJA 1985. Without a sufficient membership base maintained through the organizing and certification process, the UBCJA 1985 will be unable to continue to provide such training or apprenticeship activities.

211. The Plaintiff Ironworkers 771 provides employers with a certified, readily available pool of skilled tradespeople. Thus, employers can avoid the extra expense of recruitment and retention of employees.

212. The Plaintiff Ironworkers 771 also has a network of other union-certified employees across Canada which employers can draw from in the event of province-wide shortages.

213. The Plaintiff Ironworkers 771 operates a joint apprenticeship program with employers. The Ironworkers 771 also pays expenses for members in the apprenticeship program, including books, materials and tuition fees, at no cost to the apprentice or to the employer.

214. The Plaintiff Trades Council provides secure and stable employment, which is distributed equitably among members. The Trades Council further oversees a reputable apprenticeship program for Saskatchewan tradespeople. This program is supplemented by 96 separate training programs provided by the Trades Council, a key component of which is safety training. The Trades Council has further developed an Employee Family Assistance Program as well as a bereavement leave policy that is shared with all affiliates.

215. The Plaintiff Trades Council further provides a conduit to voice opinions and beliefs on issues which affect all affiliated tradespeople in the province of Saskatchewan. The Trades Council also provides assistance to important non-profit and charitable organizations.

216. The Plaintiff Trades Council further provides many services to employers operating in the province of Saskatchewan. The Trades Council has developed various processes which operate to supply a steady, well-trained labour pool for employers which saves them recruitment and training costs.

217. It is the experience of the Plaintiff Trades Council that some employers require up to 300 employees for time-sensitive projects that may only last a few weeks. Providing these projects with the requisite number of trained tradespeople also saves employers the costs associated with extended shutdowns at production plants.

218. The Plaintiff IATSE is the only central body which provides training and oversight of an apprenticeship program for the film industry. In many cases, IATSE will provide financial assistance to indentured film employees by reimbursing tuition expenses.

219. It is the experience of the affiant, Bonnie Morton, that unions in Saskatchewan have offered charitable support to the poor and disadvantaged in society through such provisions as: free food at anti-poverty events; free transportation to events of interest to the impoverished; in-kind donations of photocopying and mailing materials; access to technology important for reaching media outlets; free office equipment; promotion of events important to the anti-poverty movement; and, the co-sponsorship of educational events for the anti-poverty movement.

220. Historically, trade unions have held an important place in civil society and have been involved in significant legal, social, economic, and political developments including but not limited to expanding the franchise; the enactment of legislation to prevent abuse and mistreatment of employees; codification of human rights; legislation to ensure safe workplaces; and Medicare.

Particulars of the section 2(b) breach

221. The Impugned Legislation infringes the freedom of expression guaranteed by section 2(b) of the *Charter* and international law by limiting and restricting forms of expression for unions, union members and those employees wishing to become unionized as set out in paragraphs 79 to 147.

222. The Impugned Legislation also prohibits and/or limits forms of expression formerly permitted pursuant to the *Trade Union Act* for many unions, union members and/or those employees wishing to become unionized as set out in paragraphs 79 to 147 and 152 to 220.

223. In particular, the Impugned Legislation prohibits and/or limits freedom of expression of unions, union members and/or those employees wishing to become unionized by:

(a) Limiting and/or prohibiting the right of unions and/or union members to engage in expressive activities currently defined as lawful strike activities pursuant to section 2 of the *Trade Union Act* including but not limited to: work to rule and/or concerted activities designed to limit and/or restrict output, whether the activity is related to ‘essential services’ or not; publicly promoting support for their collective bargaining proposals through demonstrations, rallies, informational picketing, boycotts, refusal to handle struck goods, lawfully refusing to cross a lawful picket line, primary picketing, secondary picketing, leafleting, lawful refusal to work overtime and other forms of expression of support for their collective bargaining proposals.

(b) Limiting and/or prohibiting the rights of unions and/or union members to express their opposition to Government policies and laws which interfere with and/or limit the rights and freedoms of any citizen and/or group of citizens including unions and union members, the unemployed, people in poverty, women, people with disabilities, health care patients and service users, gay lesbian bisexual and transgendered people, Aboriginal peoples, youth, seniors, children, and other forms of economic, social and political injustice, and to be able to promote all forms of economic, social and political justice.

(c) Limiting and/or prohibiting the rights of all employees to express their support for becoming unionized and their right to collective bargaining without coercion, intimidation and/or interference from employers and/or Government including but not limited to: their right to vote democratically through “card certification”; their right to discuss the reasons for unionizing without employer interference; their right to express themselves through lawful leafleting, rallies, demonstrations; their right to express support for a particular union; and their right to express and discuss desired changes to their working conditions through the collective bargaining process.

(d) Limiting and/or prohibiting the right of unionized employees to express their opinions, to organize support for and to vote for any and all resolutions, policies, constitutional amendments, bylaw changes, elected positions, and social/economic and political objectives that they choose to, without the interference, coercion and intimidation of the employer and/or Government including being designated as an essential service employee without the right to strike solely and/or partly because of their expression on any and/or all of the above matters.

Particulars of the section 2(c) breach

224. The Impugned Legislation unduly limits the ability of the union Plaintiffs and their members to organize and assemble into trade unions. Collectively and separately, the challenged sections of Bill 6 place significant impediments on a union's ability to organize and become certified to represent workers and on individual workers' ability to join with other workers to assemble into trade unions as set out above in paragraphs 152 to 220.

225. The Impugned Legislation unduly impacts on the union Plaintiffs' and their members' freedom of assembly by shortening the length of time that a membership card is valid, increasing the ability of employers to interfere with the process of selection of trade unions; and requiring representation votes where majority support for a union is already demonstrated as set out above in paragraphs 152 to 220.

Particulars of the section 2(d) breach

226. The Impugned Legislation unduly impacts the ability of the Plaintiffs and their members to organize into trade unions and to engage in meaningful collective bargaining. Collective bargaining is one of the fundamental activities of trade unions and can only be exercised by an association of individuals. The designation of essential service levels and positions under Bill 5 restricts the ability of the union Plaintiffs and their members to place meaningful pressure on employers during labour disputes to conclude fair and timely collective agreements.

227. Bill 5 interferes with full negotiations on the issue of essential services. The Impugned Legislation promotes employer intransigence because when an impasse is reached, employers can unilaterally set essential services levels and maintain a right to change such levels at any time. Effectively, unions only possess a right to make representations in negotiations as set out in paragraphs 79 to 147.

228. Bill 5 unduly interferes with a union's effective right to engage in a work stoppage during collective bargaining. Employers can curtail the effectiveness of any job action by unilaterally expanding the employees it considers essential, thereby limiting the reduction of regular services affected through job action as set out in paragraphs 79 to 147.

229. Bill 6 permits employer interference with union organizing and undermines the administration of unions during crucial periods of collectivity, such as the negotiation of a collective as set out above in paragraphs 152 to 220.

Particulars of the section 7 breach

230. The Impugned Legislation limits job action which in turn restricts the ability of the Plaintiffs and their members to engage in meaningful collective bargaining of work conditions, health and safety of workers and employment as set out in paragraphs 79 to 147. Because of workers' dependence on wages to live, this restriction impacts the protection of liberty and the security of the person guaranteed by the *Charter*. The limitation is not in accordance with fundamental justice and is a breach of international law.

Particulars of the section 15 breach

231. The majority of the workers affected by the Impugned Legislation Bill 5 are female. The majority of the occupations affected by the Impugned Legislation are traditionally considered 'women's work'. Women and workers who work in occupations traditionally considered 'women's work' have historically not achieved working conditions equitable with male workers and those in traditionally male-dominated occupations.

232. The Impugned Legislation creates a further barrier to achieving equitable working conditions for women in the workplace and for those who work in female-dominated sectors.

233. In Saskatchewan, many unorganized and/or lower wage workers are Aboriginal. Aboriginal workers have not historically achieved equitable working conditions with those employees who are non-Aboriginal.

234. The Impugned Legislation Bill 6 creates a further barrier to Aboriginal employees achieving unionization and the benefits of collective bargaining/protections as set out above in paragraphs 152 to 220.

Particulars of the section 1 claim

235. The Impugned Legislation is not reasonably necessary in a free and democratic society. The Charter breaches identified are not saved by section 1.

236. Bill 5 is not applied consistently across the health care sector. Privately owned and operated ambulance services are not covered by Bill 5 and the experience of the Plaintiff HSAS is that these employers are confused as to whether Bill 5 applies. The tabling of an essential services agreement by Crestview Ambulance in 2008 brought bargaining to an impasse. By contrast, HSAS's collective agreement with La Ronge EMS was due to expire on October 5, 2009, and as of September 11, 2009, LaRonge EMS had not raised or tabled an essential services agreement.

Legislation not demonstrably justified in a free and democratic society

237. There is no pressing or substantial objective which warrants the significant alterations to the industrial relations regime of Saskatchewan. The Government's stated reasons for introducing the Impugned Legislation: public safety, fairness, balance, and competitiveness, are misrepresentations of the Government's real motives which are to weaken union rights and promote private sector profit and growth.

238. The Plaintiff ATU 588 represents bus drivers. Under Bill 5, it is required to negotiate an essential services agreement. In 2005, it held a work stoppage for one month and did not provide bus service to the City of Regina without causing any risk to public safety or health.

239. The Plaintiff ATU 588 was set to commence strike action in July 2008 with Firstbus, a provider of paratransit services. When negotiations failed and strike activity was imminent, ATU 588 voluntarily agreed to continue to provide emergency services during the strike.

240. The Plaintiff CEP 1-S represents telephone employees at the Crown corporation Sasktel. It is the experience of CEP that on the four occasions it has initiated a work stoppage since 1980, the union ensured that emergency services continued. The union set up an emergency services committee that would determine, on a case-by-case basis, whether a service or a circumstance constituted an emergency. If Sasktel did not agree with a determination of that committee, it could appeal the decision with the bargaining committee.

241. When Sasktel locked out the Plaintiff CEP's 4,000 members in 1996, CEP offered and provided voluntary emergency services during the lock out.

242. It is the experience of the Plaintiff CEP that no danger to life, health or safety, destruction of property, damage to the environment or serious deterioration to machinery, equipment or premises occurred while the emergency services committee ensured adequate levels of staff.

243. Prior to the work stoppage undertaken by the Plaintiff SGEU in December 2006, SGEU and the Government voluntarily negotiated staffing levels before any work stoppage.

244. The experience of the Plaintiff SGEU is that it has always provided emergency services in the absence of a legislated mandate. Some services have never been withdrawn, such as staffing at airports that service remote communities dependant on air service for medical and food supplies. SGEU has only struck at correctional facilities, where it was certain that RCMP and management were in place to provide necessary services. SGEU has also struck highways and maintenance facilities, but provided services for a short period during a winter storm in January 2007 after it learned that equipment was suffering substantial damage due to the inexperience of management operators.

245. The Plaintiff SGEU has never refused to provide voluntary essential services during labour disputes in health care, corrections or highway maintenance. During labour disputes it has voluntarily provided such services at levels which ensure public health and safety. During a 1999 health care strike, SGEU voluntarily agreed with SAHO that it would ensure that emergency services would be maintained. Consequently, throughout the strike, employees returned to work to perform emergency services.

246. In Manitoba, health care essential services are provided during labour disputes by an agreement negotiated between employers and unions. The agreement is negotiated between the Manitoba Council of Health Care Unions and the regional health authorities. This provincial agreement outlines the general principles applicable to essential services agreements and provides a process for identifying and filling essential work functions at the sectoral and workplace levels. This process also includes a dispute resolution mechanism.

247. Voluntary agreements in the Manitoba health sector are then made at the provincial, sectoral and workplace levels. This voluntary protocol designates certain job duties essential, but does not name individuals and in most instances, the union selects which employees will fill the position. During strikes and lock outs, managers are expected to be fully utilized and replacement workers are not permitted. Management may increase the numbers unilaterally in emergency situations; however, this discretion is subject to an expedited dispute resolution mechanism.

248. It is the experience of the Plaintiff HSAS that emergency services have always been performed by HSAS on mutually agreeable terms with its employer. In 2002, HSAS negotiated ad hoc agreements with each health region to provide necessary services during job action. When HSAS served notice of its work stoppage in 2002, it also provided a list of emergency services that would be provided. HSAS provided a detailed essential services plan for each of the health regions when it was in a strike position in 2007. Throughout the work stoppages in 2002 and 2007, there was never any danger to the health or safety of the public.

249. During collective bargaining preceding the HSAS's 2007 strike, on March 13, 2007, SAHO tabled a Letter of Understanding mandating essential services as part of the Plaintiff HSAS collective agreements. HSAS rejected SAHO's proposal. On July 3, 2007, HSAS commenced its work stoppage over *inter alia* SAHO's demand for essential services provisions in HSAS collective agreements. Before going on strike, HSAS invited employers to submit requests for essential services. HSAS voluntarily provided essential services plans to employers submitting requests for essential services. HSAS also voluntarily limited its strike to the withdrawal of services to 29 employees province-wide and advised SAHO which employees would not report to work. When the strike ended on July 10, 2007, less than 150 person/days had been lost to the job action. The collective agreement reached did not include an essential services provision.

250. In Saskatchewan, all of the unions representing firefighters have no-strike clauses in their collective agreements. As a result of voluntarily contracting out of the right to strike, firefighters have the right to refer bargaining issues to binding arbitration under the *Fire Departments Platoon Act*.

251. In British Columbia, in the health care sector, essential services designations have been set through private arbitration processes and, on occasion, with the assistance of the LRB following issuance of strike notice. Essential services levels and protocols at health care facilities are based on a global essential services order, designed to provide comprehensive rules for job action. The global order is supplemented by specific orders for each work site. Employers and unions have the right to expedited hearings at the LRB in advance of job actions to set the classifications and number of employees in each classification. Individual employees are not named.

International Law

252. The Impugned Legislation violates international law including Vienna Law of Treaties, Vienna Convention, *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, 6 I.L.M. 368, *International Covenant on Economic, Social and Cultural Rights*, *International Labour Organization Freedom of Association and Protection of the Right to Organize*, 1948 (No. 87), *International Labour Organization Declaration on Fundamental Principles and Rights at Work* (1998), *International Labour Organization Right to Organize and Collective Bargaining Convention*, 1949 (No. 98).

253. Saskatchewan's labour legislation as amended by the Impugned Legislation does not meet the standards of the international human rights treaties that Canada has ratified.

254. In June 2008, the Plaintiff SGEU, with its national affiliate the National Union of Public and General Employees ("NUPGE"), filed a complaint (the "ILO Complaint") with the International Labour Organization Committee on the Freedom of Association ("ILO/CFA").

255. In August 2008, the Plaintiff SFL, together with both Plaintiff and non- Plaintiff unions including unions such as CUPE, Steelworkers, Saskatchewan Union of Nurses, HSAS, GSU, filed a statement of evidence detailing some of the impact of Bills 5 and 6 in support of the ILO Complaint.

256. On September 8, 2008, the Plaintiff SFL and supporting unions, provided additional evidence to the ILO/CFA, setting out further evidence on the impact of Bills 5 and 6 on unions and workers. The ILO/CFA accepted the SFL as a separate complainant, in addition to the SGEU/NUPGE .

257. The ILO/CFA has not rendered a decision regarding the ILO Complaint.

258. The Impugned Legislation erodes the rights of unions and workers in Saskatchewan and as a consequence, the labour relations system in Saskatchewan does not provide the same level of protection to employees as is found in international law and conventions.

259. International law requires governments to promote, through legislation and policy, the principles of freedom of association of workers and unions. The Impugned Legislation, rather than promoting those principles, is motivated by anti-union animus and is designed to and effectively does undermine those principles.

Additional grounds

260. The Impugned Legislation alters the existing rights of the Plaintiffs contrary to the rule of law.

Claim

261. The Plaintiffs seek:

- (a) a declaration that, taken together, the Impugned Legislation violates sections 2(b), 2(c) and 2(d), 7 and 15 of the *Charter* and are not saved by section 1;
- (b) in addition or in the alternative, a declaration that the following sections of Bill 5 violate sections 2(b), 2(c) and 2(d), 7, and 15 of the *Charter* and are not saved by section 1:

sections 2 (definition of “public employer” and “essential services”), 4, 6(2), 6(3), 7(1)(d), 7(2), 9(2), 9(4)(b), 10, 11, 14, 16, 18, 20(2), and 21;

- (c) in addition or in the alternative, a declaration that the following sections of Bill 6 violate sections 2(b), 2(c) and 2(d), 7, and 15 of the *Charter* and are not saved by section 1: sections 3, 6, 7 and 11;
- (d) damages pursuant to section 24(1) of the *Constitution Act, 1982*;
- (e) an interlocutory and/or permanent injunction declaring the Impugned Legislation inoperative;
- (f) in addition or in the alternative, an interlocutory and/or permanent injunction declaring sections 2 (definition of “public employer” and “essential services”), 4, 6(2), 6(3), 7(1)(d), 7(2), 9(2), 9(4)(b), 10, 11, 14, 16, 18, 20(2), and 21 of Bill 5 inoperative;
- (g) in addition or in the alternative, an interlocutory and/or permanent injunction declaring sections 3, 6, 7 and 11 of Bill 6 inoperative;
- (h) pre-judgement and post-judgement interest;
- (I) costs, including special costs or increased costs; and
- (j) such other relief, under section 52 of the *Charter* or otherwise, as counsel requests or this Honourable Court declares just.

DATED at the City of Regina, in the Province of Saskatchewan, this ____th day of December, 2009.

(Signature)

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