CASE NO. 2654

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaints against the Government of Canada
presented by
- **the National Union of Public and General Employees (NUPGE)**
- **the Canadian Labour Congress (CLC)**
- **the Saskatchewan Federation of Labour (SFL)**

supported by
- **Public Services International (PSI)**

Allegations: The complainants allege that the Public Service Essential Services Act and the recently amended Trade Union Act impede workers from exercising their fundamental right to freedom of association by making it more difficult for workers to join unions, engage in free collective bargaining and exercise their right to strike

313. The complaints are contained in communications of the National Union of Public and General Employees (NUPGE), on behalf of the Saskatchewan Government and General Employees" Union (SGEU), dated 12 June 2008 and 28 September 2009; communications of the Canadian Labour Congress (CLC), on behalf of the Saskatchewan Labour Federation (SFL) and its affiliates, dated 8 September 2008 and 8 September 2009; and a communication of the SFL dated 25 May 2009. By a communication dated 25 June 2008, Public Services International (PSI) associated itself with these complaints.

314. The Government sent its observations in communications dated 11 February and 15 October 2009.

315. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

316. In a communication dated 12 June 2008, the NUPGE states that the Act Respecting Essential Public Services (Bill 5) and the Act to Amend the Trade Union Act (Bill 6) were introduced in the Saskatchewan legislative assembly on 19 December 2007 and proclaimed into law on 14 May 2008.

317. The complainants allege that: (1) the pieces of legislation are designed to make it more difficult for workers to join unions, engage in free collective bargaining and exercise their right to strike; (2) for all intent and purposes, the legislation denies the right to strike to the majority of public employees in Saskatchewan by proclaiming essential services legislation which makes strikes ineffective for those public employees; (3) the Government of Saskatchewan failed to provide access to an independent arbitration mechanism for those public employees who will be so negatively impacted by essential services legislation; and (4) the Government of Saskatchewan failed to participate in a fully open

and extensive consultative process with representatives of workers" organizations prior to introducing legislation that has a major negative impact on the rights of the working people of Saskatchewan.

318. The complainants allege, in addition, that the Saskatchewan Government"s actions violate principles of freedom of association by seriously eroding the confidence of employees in the collective bargaining process and that the Government of Saskatchewan fails to give priority to collective bargaining as a means of determining public employees" employment conditions.

319. The complainants note that the Government of Saskatchewan did not consult any worker organizations on the need for, contents of or potential effects of the two Bills prior to drafting them. After the legislation was introduced, the Government of Saskatchewan held private meetings with less than a dozen unions during a two- to three-week period to obtain feedback. The SFL and the labour movement of Saskatchewan invited the Government of Saskatchewan to participate in various forms of meaningful consultation and study prior to the introduction and proclamation of Bills 5 and 6, including during an informal meeting between the President of the SFL and the Minister of Labour at which the President of the SFL asked for consultation before any legislation was introduced affecting unions and workers in Saskatchewan and offered a team of experts that would be willing to meet and discuss any proposed legislation. The offer was not accepted and Bills 5 and 6 were introduced a week later. The complainants claim that this consultative process was inadequate and insufficient to constitute meaningful consultation, contrary to the basic principles of freedom of association regarding the importance of consultation and cooperation between public authorities and employers" and workers" organizations. According to the SFL, while there were several minor and insignificant changes made to Bill 5, not one of the substantive changes or concerns that it has identified was addressed. No changes were made to Bill 6.

Public Service Essential Services Act

320. The complainants allege that the definition of what constitutes an essential employee is so broad that practically any public service employee could be designated as an essential employee and therefore not eligible to go on strike. Section 2(c) defines essential services as services provided by the Government of Saskatchewan or any other public employer that are necessary to enable the Government or a public employer to prevent danger to life, health or safety; the destruction or serious deterioration of machinery, equipment or premises; serious environmental damage; or disruption of any of the courts of Saskatchewan. Furthermore, the Cabinet can prescribe other services provided by the Government of Saskatchewan as essential services. The complainants allege that the Cabinet thus has an unrestrained ability to designate, as essential, those services that are beyond those outlined in the definition and there is no requirement that these be discussed or scrutinized.

321. The complainants also allege that the definition of "public employer" is so broad that practically all public sector employers in the province are covered, including municipal workers and post-secondary institute workers. Moreover, the Cabinet can prescribe, by regulation, as a public employer "any other person, agency or body, or class of persons, agencies or bodies". Consequently, a non-profit private sector employer which uses government funds to provide a public service could be considered a public employer under the legislation.

322. The complainants allege that the process for negotiating Essential Service Agreements (ESA) between public employers and unions, as provided for in the Act, is seriously biased toward the employer. Under section 7 of the legislation, a public employer and a union

must negotiate an ESA, setting out essential services and the classifications and numbers and names of employees who must work during a strike, at least 90 days prior to the expiration of a collective agreement. However, there is no incentive for the employer to successfully negotiate an ESA with the union. In fact, under section 9, failure to reach an agreement gives the employer the automatic right to serve notice to the union as to the number of classifications and employees it considers essential.

323. Furthermore, in naming which employees from the classifications it considers essential, the employer could designate the names of some or all of the union's local executive, bargaining committee and shop stewards. This gives the Government of Saskatchewan or a public employer the ability to substantially interfere in the way the union conducts itself and represents its members during a strike.

324. Moreover, if at any time after a strike has begun, the public employer determines that more employees in one or more classifications are required to maintain essential services, the employer may serve a further notice on the union setting out the additional number and names of employees who must work during all or any part of the work stoppage. By being able to increase essential service designations during a strike, the employer has the unfettered ability to determine how effective a strike will be at any stage of the job action.

325. The complainants allege that the legislation prohibits unions from challenging the employer's designation of classifications of essential services. Under section 10 of the legislation, the union can appeal to the Saskatchewan Labour Relations Board (LRB) to change the *number* but not the *classifications* of employees deemed essential. In other words, under the Act, unions cannot challenge the employer's designation of classifications of workers who are "essential"; they can only argue at the LRB about whether the numbers in any classification are high. The Board then has 14 days or more to hold a hearing or conduct an investigation on the appeal prior to issuing an order accepting or denying the union's application. The employer or union may further apply to the Board to vary or rescind its original order. If employers know that unions cannot challenge the designation of classifications designated as essential, they are likely to overestimate the number of workers who they require to be at work during a dispute. Even if the Labour Relations Board rules against the employer on a union appeal, the fact remains that those affected workers were prevented from participating in the strike during the time that appeal process took place.

326. Employees designated as providing essential services also face fines of up to 2,000 Canadian Dollars (CAD) and further fines of CAD400 per day for violating the legislation. Unions that impede or prevent any designated essential service employee from complying with the legislation are subject to an initial fine of up to CAD50,000, plus an additional CAD10,000 each day for which the offence continues.

327. The complainants allege that this legislation is not just designed to ensure the continued provision of essential services threatened by strike action, as the Government of Saskatchewan claims, but rather to limit union bargaining power and the impact of strikes generally, as workers cannot engage in free collective bargaining without the ability to effectively withdraw their services if they deem it necessary.

Act to amend the Trade Union Act

328. The complainants allege that the Trade Union Act as amended does not guarantee freedom of association but rather provides workers with less protection against unfair practices and reduces the ability of working people to join unions and engage in collective bargaining. The cumulative effect of the amendments contained in the Act is to weaken the rights of working people in the province of Saskatchewan.

329. Section 3 of the Act eliminates automatic certification when a union has demonstrated to have signed union cards from a majority of workers in a bargaining unit. Instead, regardless of how many workers sign union cards, a secret ballot supervised by the LRB is required before certification can occur. The Act also requires a minimum of 45 per cent cards signed within 90 days before a certification vote can take place; previously 25 per cent of cards signed within six months was sufficient to trigger a secret ballot vote. The complainants allege that the real intent of these increased requirements is to make it more difficult for employees to organize and to increase opportunities for anti-union employers to discourage their employees from joining a union.

330. According to the complainants, the Act also legalizes employer interference in union activities by weakening the rules on unfair labour practices. Section 6 allows employers to communicate to their employees not only facts, as in the previous legislation, but also opinions. The complainants consider that the amendment increases the right of employers to communicate facts and opinions to their employees on any union-related issue at any point outside of prescribed time periods for organizing drives and de-certification drives. It implies the right of an employer to communicate its opinions to an employee or group of employees about: whether they should be trying to get rid of the union; stopping a union organizing drive; refusing to file a grievance or supporting the union filing a grievance; opposing a bargaining position or proposal of the union; voting against a strike or to end a strike; organizing to defeat or elect certain employees to union positions; supporting a raid by another union; or voting against dues increases and assessments. Furthermore, the complainants allege that section 6 could even be interpreted to mean that an employer"s communication on union-related issues can in fact be intimidating or coercive without being deemed an unfair labour practice.

331. In their communications dated 25 May, and 8 and 28 September 2009, the complainants provide information on the impact of the new legislation in practice one year after its enactment. The complainants allege that, since the enactment of the new legislation, new and successful unionization drives have come to an historic law. The effects of the new laws combined together with the politically and ideologically motivated dismissal of the LRB"s chairperson and vice -chairpersons and their replacement by the Government of Saskatchewan have brought the freedom of unorganized workers to form unions almost to a complete halt.

332. In particular, the complainants indicate that as the Trade Union Act no longer guarantees that the right of employers to communicate with workers cannot be used to interfere with workers exercising their freedom of association rights, employers have begun communicating directly with workers in such a way as to undermine their freedom to associate. The SFL refers to an example when such a communication occurred during a strike at the Potash Corporation of Saskatchewan in July 2008. The employer communicated directly with employees and their families through two letters, dated 18 July and 8 October, posted to employees" home s. Allegedly, the Communications, Energy and Paper workers" Union (CEP) has also experienced coercive communication from the employer since the enactment of the new legislation. In August 2008, Mercury Graphics, threatened to fire all workers and close the plant if workers went on strike and did not accept the employer"s bargaining demands. Workers went on strike on 7 September 2009, but on 15 September 2009 the management locked them out. On 17 September 2009, workers received a letter threatening that, if they did not accept the employer"s demands, the plant would be closed. On 19 September 2009, the employer gave notice of permanent closure and workers were dismissed. Furthermore, the ISM Canada management has now changed its industrial practices and communicates directly with individual members of the CEP. In June 2009, two mangers of the ISM Canada held a meeting with an employee and attempted to get her to sign her own demotion letter without the consent of the bargaining committee or the union. In this respect, the SFL indicates that, along with other unions, it

met with the Minister of Advanced Employment, Education and Labour in February 2008 and raised its concern at the possible misuse of employers" rights to communicate with workers. While the Ministry acknowledged that the concern might be legitimate, it turned down the SFL"s proposal for an amendment clarifying that coercion and interference would remain an unfair labour practice.

333. With the card certification process that workers previously enjoyed, workers could meet secretly with union organizers, have all their questions answered in private and decide to exercise their freedom to associate without the employer knowing. During contested applications, the LRB would take the necessary measures to ensure that supporters of the union could not be identified through questioning. The complainants allege that there is a growing list of examples where this privacy has been lost. For instance, in the construction industry, employers are now notified by the LRB that a unionization drive is taking place; the vote is held at workplaces with employers having access to voters" lists and results; employers" representatives are present at polling stations to monitor who votes. There is nothing secret about this process and workers cannot protect their privacy.

334. The complainants also provide examples of several cases in the construction and film industries, where union cards were signed and submitted to the LRB, a vote was ordered, but did not take place for months. By the time the vote was scheduled, the project was over and workers lost their ability to enjoy a collective agreement and to have employers recognize them as a bargaining unit on any future projects.

335. The complainants consider that the abolition of an automatic card certification in favour of mandatory votes violates freedom of association principles because it destroys the collective bargaining regime that has worked for the benefit of workers and business for decades. The secrecy in organizing is compromised and the delays are resulting in the inability to form a union and conclude enforceable collective agreements. Saskatchewan had the card certification process in place for over 60 years. In reviewing the LRB decisions and reports since 1945, it appears that intimidation, coercion or any other form of unacceptable conduct by unions gathering support through card certification was almost non-existent. Out of almost 200 reported cases dealing with interference and intimidation during the organizing drives more than 180 were about interference by employers. There were only a few cases where substantive allegations of inappropriate conduct were presented against a union.

336. The complainants consider that the Government of Saskatchewan has provided no rationale for changing the certification process, except to say that it would make the workplace more "democratic" if workers had to hold a secret ballot vote. The complainants submit that democracy includes a truly "secret" ballot and the greatest possible protection against the repression that follows from employers who fire or discipline workers who they know are union activists. Even despite the previously existing protection, the case law is filled with examples where employers have used coercion and intimidation to stop union drives illegally by firing union supporters. The SFL points out that even if trade unionists are given their jobs back though a court order, the organizing drive still fails, as workers no longer entertain the question of joining a union, knowing they would be putting their livelihoods on the line. The fear is even greater for vulnerable workers, such as single parents and immigrants. In a survey of Canadian business conducted in the 1990s, 95 per cent of employers surveyed said they would engage in unfair labour practices if it would result in preventing a union certification because the only consequence would be to reinstate the workers and possibly pay damages.

337. The unions further indicate that, since the Public Service Essential Services Act was enacted, collective bargaining has come almost to a complete halt and very few agreements are being concluded in the public sector. The major public sector unions have been without

collective agreements since they expired in May 2008. The situation is the same for the majority of health-care workers who are also without collective agreements since they expired in March 2008.

338. One of the effects of this Act is to delay any progress towards negotiating a new collective agreement. Employers are refusing to table monetary items and negotiate wage increases until unions agree to the number of people designated. Time and resources are being spent on negotiating who might be "essential" during a strike rather than making good faith efforts to negotiate a collective agreement. Trade unions do not have unlimited resources and their right to bargain collectively is therefore under serious threat.

339. Employers also know that, under the new law, they can designate who they want even if there is no agreement on the designations, as the Act only requires that the employer begins to negotiate an essential service agreement and does not require the employer to reach an agreement. If the union does not agree to the employers" proposal, the employer has the right to unilaterally designate a list of essential services employees. The complainants contend that employers are using their right to designate workers as essential and that in many workplaces they have designated almost all employees, including members of the bargaining committee. In some workplaces, employers have indicated that they would designate even the remaining workers if the strike is effective, even if that would mean designating 100 per cent of employees. In the health sector, designated employees include laundry, cafeteria and library workers, groundskeepers and even people who are temporarily off work (on education or maternity leave). Casual employees, highway workers, casino workers, crown corporation government insurance agents and post-secondary education workers can also be designated pursuant to the law. The complainants allege that, in many cases, employers have designated more employees to work during a strike than the number of employees that would be working during the time there is no strike.

340. The complainants indicate that the Act supersedes all other laws, collective agreements and case precedents. This means that, even if unions had freely negotiated essential services agreements for use during a strike (in Saskatchewan, unions have historically provided emergency services during a labour dispute), these agreements are now overridden by the provincial Government and employers. The SFL alleges that the provincial Government, as the largest employer in the province, has stated in writing to the Saskatchewan Government and General Employees" Union, that any essential services agreement they reach at the bargaining table can be overridden by their executive regulation-making authority under the Act. In this respect, the complainants indicate that, on 13 July 2009, pursuant to clause 2(c)(ii) of the Public Service Essential Services Act, the Government of Saskatchewan adopted the Public Service Essential Services Regulations prescribing which government services are required in the event of a labour dispute. These Regulations were enacted ten days after the issuance of an arbitration award concerning the essential services designation. The basis for the arbitration award was a Memorandum of Understanding signed by the Government of Saskatchewan and the bargaining unit on 14 February 2007 in which both parties agreed to negotiate into the collective agreement, an essential services agreement. According to the Memorandum, in the event that the parties fail to reach an agreement within 180 days, the issue is referred to final and binding arbitration. By unilaterally enacting the abovementioned Regulations, the Government of Saskatchewan ignored this binding award by implementing its own regulation containing a number of additional designated essential services not included in the arbitrator"s 2 July 2009 award.

341. Furthermore, the complainants indicate that the Act does not provide for a compulsory arbitration mechanism to achieve a collective agreement through a third party. There is no provision in the Act for any means to compensate workers for taking away their right to

strike. The SFL indicates that, in spring 2009, the Saskatchewan Government and General Employees" Union and the Saskatchewan Government, as employer, appeared before an arbitrator to ask him to decide on the extent to which employees designated as "essential" were entitled to compensation for losing their right to strike and to bargain a collective agreement. In a written submission dated 31 March 2009, the Saskatchewan Government opposed this concept and argued that an arbiter has no jurisdiction to award compensation to workers who had lost their right to strike. In addition, the provincial Government argued that, even if the arbitrator had jurisdiction, it would not be appropriate to provide any compensation to "essential" employees.

342. With regard to the provincial Government"s suggestion that, in the case of violations of the legislation, unions can bring complaints to the LRB and that employers can be charged with unfair labour practices, the complainants indicate that the LRB no longer enjoys the confidence of trade unions. According to the SFL, the new chairperson of the LRB was illegally appointed and the former chairperson and vice-chairpersons were dismissed so as to replace them with new people who would interpret the laws in a manner consistent with the philosophy of the Saskatchewan Premier"s party and to promote business investment. According to the complainants, the new chairperson was a lawyer who advised the new provincial Government"s transition team, which recommended the firing of the former board members and was a member of that political party. The SFL and other unions filed a case in Saskatchewan"s Court of Queen"s Bench alleging that the terminations of the former chairperson and the vice-chairpersons of the LRB and their replacement was unconstitutional, as the process of appointments and the interference of the Saskatchewan Government compromised the judicial independence of the LRB. The Court heard the case and issued a decision in January 2009 determining that the principles of judicial independence applied to the LRB, but not agreeing with the unions with respect to the facts. The matter is now before the Court of Appeal.

343. Finally, the complainants allege that the Trespass to Property Act enacted in July 2009 can potentially make it illegal for anyone to picket on any locations where workers have always lawfully picketed. Under the Act, a citizen can be arrested and fined without a warrant and there is reverse onus to prove his or her innocence.

B. The Government's reply

344. By its communications dated 11 February and 15 October 2009, the Government forwards the observations of the Government of Saskatchewan in this case. In its submission, the latter acknowledges and supports the right to free collective bargaining and indicates that in Saskatchewan, the rights and principles related to the process of free collective bargaining are enshrined in the Trade Union Act. This Act provides the legal framework for collective bargaining, along with a procedure for adjudicating disputes and enforcing rights and obligations. The Act also creates the LRB, an independent, quasi-judicial tribunal with exclusive and binding jurisdiction over the matters assigned to it by the Act. The Board monitors the procedural aspects of the collective bargaining process and hears disputes related to unfair labour practices and grievances arising out of collective bargaining agreements.

345. The Saskatchewan Government considers that the Public Service Essential Services Act and the Trade Union Act continue to facilitate and protect the rights of workers to engage in collective bargaining, balanced with the provincial Government"s obligation to protect the health and safety of the public during a workplace dispute and ensure the continued economic growth and prosperity of the province.

346. The provincial Government states that while it did not undertake consultations before introducing the draft legislation, it undertook extensive consultation afterwards. In January

and February 2008, the Ministry of Advanced Education, Employment and Labour sent out 80 letters of invitation for meetings and placed public notices in nearly 100 newspapers across the province. The Minster and officials met with nearly 100 individuals, including representatives from organized labour, over a series of 20 meetings. The Ministry received approximately 82 submissions on Bill 5 (Act Respecting Essential Public Services) and 55 submissions on Bill 6 (Act to amend the Trade Union Act). Approximately 2,480 letters received from individuals in the province expressing views on Bills 5 and 6. As a result of the consultation process, five house amendments to Bill 5 were introduced when the legislature resumed sitting in March 2008.

Public Service Essential Services Act

347. The Government of Saskatchewan notes that, prior to the passing of the Act, Saskatchewan had no essential services legislation. The Act balances the right of workers to strike and the need for essential services and protection of the public. The legislation does not outlaw the right of any worker or union to strike. Rather, it creates a process for the negotiation of essential service agreements. The legislation also provides for recourse to the LRB in the event the parties are unable to conclude an ESA. As examples of the necessity for essential services legislation the Saskatchewan Government cites three public sector strikes in the last 11 years impacting hospital, snowplough, correctional, court and electricity services. While agreeing that this new process has the potential to slow negotiations, the provincial Government notes that, where there is a perceived violation of the Act, an application can be made to the LRB. The Act does supersede the provisions of other laws and collective agreements. This is to ensure that an essential services agreement is reached between the parties that meets the minimum standard established in the Act.

348. According to the Government of Saskatchewan, the definition of essential services in the Act adheres to the principles enunciated by the Committee on Freedom of Association. The legislation provides categories or criteria for determining what must be considered an essential service; these criteria or categories are the basis for public employers and trade unions to negotiate ESAs, including the specific job classifications and number of employees needed to maintain essential services that are required in the event of a work stoppage. Specifically referencing services necessary to prevent serious damage to the environment and destruction of property in the definition is consistent with this concept of essential services delineated by the Committee on Freedom of Association because such events may cause irreparable harm, damage and hardship with direct and indirect impacts on human health and well-being. The definition also includes reference to maintaining the administration of the courts, which is consistent with previous decisions of the Committee on Freedom of Association.

349. The Government of Saskatchewan claims that the definition of “public employer” in the Act is also consistent with the principles set out by the Committee on Freedom of Association. The definition includes the Government of Saskatchewan; Crown corporations; regional health authorities and affiliates; the Saskatchewan Cancer Agency; universities and technical colleges; municipalities; and police boards. These are public entities providing services that are potentially necessary for protection of health and safety and the prevention of serious environmental damage or destruction of property. The Saskatchewan Government further indicates that there is potential for private entities to be included in the definition of “public employer”; but only where the service provided is a public service and meets the definition of an “essential service”. Based on the se criteria, private entities that provide a private service cannot be designated as essential under this legislation. The intent of this provision is to address any unionized enterprise where a public service is provided by a private entity, for example emergency medical services or ambulance services.

350. Concerning the authority to prescribe further public employers, in its communication dated 11 February 2009, the Government of Saskatchewan states that public services are provided by a myriad of entities that are supported by public funding and subject to public accountability through legislative and regulatory control. It is not practical or possible to list all such entities directly in legislation, whereas prescribing them in regulation will ensure the list is reflective and current. The Saskatchewan Government adds that Cabinet does not have open-ended discretion and only those employers that provide essential services to the public may be prescribed. In its communication dated 15 October 2009, in answering the question respecting what are "prescribed" essential services, the provincial Government provides the following background information. In 2006–07, the Saskatchewan Government and General Employees Union (SGEU) went on strike for eight weeks. As part of the resolution of the strike the mediator recommended that the SGEU and the Government of Saskatchewan prepare an essential services plan prior to the expiry of the next collective bargaining agreement. In recognition of this process, and to be open and transparent as to the services of the Executive Government that are considered essential, a provision was included in the Public Service Essential Services Act which would require those services deemed essential to be established in regulations. Regulations under clause 2(c)(ii)(B) came into force on 10 July 2009. The Government transmits a copy of these regulations.

351. The Government of Saskatchewan indicates that the Act requires that, within 90 days of the expiry of a collective bargaining agreement, public service employers and trade unions must undertake negotiations to conclude an ESA. The negotiation process begins with the employer providing a list to the trade union of what it considers as essential services. Within 30 days of expiry, or if the collective bargaining agreement has expired, an employer may serve notice on the trade union setting out the classifications, numbers of employees within each classification and names of employees within each classification who must continue to work during a work stoppage. The purpose of this notice is to assist with the negotiations, and this list does not automatically become the ESA. In the event there is a work stoppage or potential work stoppage and no ESA is in place, section 9 requires an employer to serve the trade union with notice setting out the classification, number and names of employees who must continue to work to maintain essential services. An additional notice may be served to increase or decrease the number of employees required to maintain essential services during a work stoppage. A trade union may apply to the LRB if it believes that essential services can be maintained with fewer employees than the number set out in the employer"s notice. The legislation directs the Board to determine the issue within 14 days of receipt of such an application.

352. The Government of Saskatchewan explains that the public employer"s ability to serve a notice is not unfettered. The employer"s list of classes may only include services that are essential services as defined in the legislation. The provincial Government adds that the employer may not refuse to negotiate an ESA and wait to serve a notice pursuant to section 9; as with any collective bargaining negotiation, there is a duty on the parties to bargain in good faith on ESAs, and recourse may be had to the LRB in the event that a party refuses to bargain in good faith.

353. Further, the Saskatchewan Government states that an employer cannot discriminate or interfere with the administration of any labour organization through an ESA. Public service employers must comply with the Trade Union Act, which prohibits unfair labour practices, including interfering, restraining, intimidating, threatening, or coercing an employee in the exercise of any right conferred by the Act.

354. As regards fines and penalties, the Government of Saskatchewan states they may only be imposed after a person has been convicted by a court, thereby ensuring full procedural protections. The maximum fine amounts are in keeping with fine amounts provided for in

the Trade Union Act and the Labour Standards Act. It is a basic principle of sentencing that the most serious fines are imposed only for the most serious offences.

355. With regard to compensatory guaranties available to workers whose right to strike is restricted or prohibited by the Act, the Government of Saskatchewan indicates that section 18 of the Act states that, if there is a work stoppage, essential service employees are required to perform the duties of their employment in accordance with the terms and conditions of the most recent collective bargaining agreement. As a result, those employees working in positions identified as essential are entitled to wages and benefits as established in that collective agreement.

Act to amend the Trade Union Act

356. Concerning the requirement of secret ballot voting by all eligible employees for union certification and de-certification, the Government of Saskatchewan notes that the quorum of votes required for certification remains unchanged at 50 per cent plus one of votes cast. As an integral part of the democratic system, secret ballot voting protects the right of workers to freely exercise their choices. The Saskatchewan Government claims that the 45 per cent support requirement for a proposed bargaining unit is in keeping with the thresholds of other Canadian jurisdictions (Alberta, Manitoba and Ontario have a 40 per cent threshold, and British Columbia has a 45 per cent threshold). It also ensures greater stability for unionized workplaces as it applies to both certification and de-certification drives. Explaining how the new quorum system works in practice, the Government of Saskatchewan provides the following information. The amended certification and rescission process requires the trade union (certification) or union member (rescission) to produce written support of at least 45 per cent of the employees in the potential or existing bargaining unit. If this threshold is reached, the LRB is required to order a vote by secret ballot. Such votes monitored by the Board or its representative. In general, these votes are likely to occur in the workplace or through mail-in ballot. In making application to the LRB, the trade union must ensure that the written support used for its application (certification) to the Board is dated within the 90 days preceding the date of application. This allows for the most recent and current workers in that organization to make their wishes known without involving those whose employment may have ceased. The Government of Saskatchewan further indicates that the intent of the establishment of a secret ballot process was to ensure that workers (seeking unionization) or union members (seeking alternate representation or rescission), can freely express their democratic choice without fear of reprisals, intimidation and coercion by representatives of the union, employer or individuals in the workplace.

357. Concerning employer communication, the Government of Saskatchewan notes that prior to the amendment, the legislation had been interpreted by the LRB to mean that an employer could not communicate in any manner to employees during a certification drive. Section 11(1)(a) of the Act clarifies that an employer can communicate facts and opinions to its employees. The employer remains prohibited from interfering with the exercise by employees of any rights under the Trade Union Act and from any acts of restraint, intimidation, threats or coercion which are considered to be an unfair labour practice. Any such violation may be brought before the LRB. The Saskatchewan Government indicates that, while extensive consultations were conducted on the proposed amendments to the Trade Union Act, after thoughtful consideration of the information gathered, it was determined that amendments were not required. This does not invalidate the process.

358. The Government of Saskatchewan also notes that the Act promotes greater transparency and accountability by the LRB, as it is now required to submit an annual report to the Legislature and directed to render its decisions within six months of the close of a hearing. The amendments also remove a three year limit on collective bargaining agreements. This

change reflects the notion that it is more appropriate for employers and trade unions to negotiate an appropriate length for a collective bargaining agreement rather than impose an arbitrary statutory limit.

359. With regard to the LRB appointments, the provincial Government indicates that the Court of Queen"s Bench for Saskatchewan dismissed the SFL"s challenge to the appointment of the chairperson and vice-chairpersons of the LRB in a decision dated 14 January 2009. The Court determined that the Government of Saskatchewan clearly had the statutory authority to terminate the appointments of the previous chairperson and vice-chairpersons of the LRB. The Court concluded there was no merit to the SFL"s arguments that the new appointments to the LRB impacted the impartiality and independence of the Board. The SFL commenced an appeal of this decision to the Saskatchewan Court of Appeal. As of 29 September 2009, the materials required for the appellants to perfect their appeal have not been filed, and no date has been set for a hearing.

Trespass to Property Act

360. The Government of Saskatchewan indicates that the Trespass to Property Act came into force on 1 July 2009. The legislation designates certain activities as offences, such as entering onto enclosed lands, lands that are posted against entry, refusing to leave lands or premises when requested to do so, or refusing to stop an activity on lands or premises when requested to do so. A peace officer can issue a ticket or potentially arrest an individual acting in breach of the legislation. The legislation does not change property owners" rights to control access to their own land under the existing common law related to trespass. Rather, the purpose of the legislation is to provide peace officers and property owners with an effective enforcement mechanism in circumstances where a trespass occurs. The rights of individuals to engage in otherwise lawful picketing are not affected by the implementation of this Act. Section 3 specifically provides that persons acting under a "right of authority conferred by law" are not committing trespass. Lawful picketing is encompassed under the right to freedom of association, and constitutionally guaranteed pursuant to section 2(b) of Canada"s Charter of Rights and Freedoms. Case law continues to develop to define the appropriate balance between the rights of a property owner and the right to picket. Accordingly, it is neither necessary nor desirable to define Charter rights in provincial legislation.

C. The Committee's conclusions

361. *The Committee notes that the present complaint concerns two Acts adopted in Saskatchewan in connection with labour relations, and in particular, the right to strike and collective bargaining in the public sector, namely: the Public Service Essential Services Act (Bill 5) and the Act to Amend the Trade Union Act (Bill 6). Both Acts were proclaimed into law on 14 May 2008.*

362. *The Committee further notes that according to the complainants, these pieces of legislation were adopted without prior consultation with the trade unions concerned. In this regard, the Committee notes that the Saskatchewan Government concedes that it had not undertaken consultations prior to introducing the draft legislation, but rather had extensive consultations afterwards and that there were subsequently five amendments to Bill 5. The Committee considers it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek*

the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests. It is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 1068 and 1071]. The Committee expects that the provincial Government will hold full and specific consultations with the relevant workers' and employers' organizations in the future at the early stage of considering the adoption of any legislation in this regard so as to restore the confidence of the parties in the process and truly permit the attainment of mutually acceptable solutions where possible.*

363. *With regard to the Public Service Essential Services Act, the Committee notes that the complainants allege that this legislation limits union bargaining power and the impact of strikes generally, as workers cannot engage in free collective bargaining without the ability to effectively withdraw their services if they deem it necessary. In particular, the complainants consider that the definition of what constitutes "essential services" is too broad, just as the definition of "public employer". Moreover, according to the complainants, the procedure for designation of essential services to be maintained during a work stoppage and the so affected workers violates the right to strike. The Committee notes the provincial Government's statement to the effect that legislation dealing with essential services was needed to protect the health and safety of the public during a labour dispute and that the definitions of both terms, "essential services" and "public employer", as well as the procedure of establishing essential services are in conformity with the freedom of association principles.*

364. *The Committee notes that according to section 2(c) of the Act, "essential services" are defined as:*

(i) with respect to services provided by a public employer other than the Government of Saskatchewan, services that are necessary to enable a public employer to prevent:

(A) danger to life, health or safety;

(B) the destruction or serious deterioration of machinery, equipment or premises;

(C) serious environmental damages; or

(D) disruption of any of the courts of Saskatchewan; and

(ii) with respect to services provided by the Government of Saskatchewan, services that:

(A) meet the criteria set out in subclause (i); and

(B) are prescribed.

365. *The Committee further notes the definition of "public employer", provided for in section 2(i), which means:*

(i) the Government of Saskatchewan;

(ii) a Crown corporation …;

(iii) a regional health authority …;

(iv) an affiliate as defined in The Regional Health Services Act;

(v) the Saskatchewan Cancer Agency …;

(vi) the University of Regina;

(vii) the University of Saskatchewan;

(viii) the Saskatchewan Institute of Applied Science and Technology;

(ix) a municipality;

(x) a board as defined in The Police Act, 1990;

(xi) any other person, agency or body, or class of persons, agencies or bodies that:

(a) provides essential service to the public; and

(b) is prescribed.

366. *The Committee notes the provincial Government's explanation that, for the purposes of the Act, private entities may be included in the definition of "public employer" only where the service provided is a public service and meets the definition of "essential services".*

367. *The Committee further notes the Public Service Essential Services Regulations were enacted on 10 July 2009 pursuant to subsection 2(c)(ii) of the Public Service Essential Services Act which sets out a list of prescribed essential services as follows:*

Ministry (Column 1)	**Service/Programme** (Column 2)
Advanced Education, Employment and Labour	Occupational Health and Safety
Agriculture	Irrigation Asset Management Unit
Corrections, Public Safety and Policing	Adult Corrections Programme Young Offender Programme Community Training Residences Community Corrections Adult Probation Services Youth Open Custody Facilities Protection and Emergency Services Licensing and Inspections – Boiler and Pressure Vessels Licensing and Inspections – Elevators Policing Services, Licensing of Private Investigators and Security Guards
Energy and Resources	Emergency Response Team
Environment	Northern Air Operations/Fire Management and Forest protection Branch Covert Operations Spill Response Programme – Provincial Hazardous Materials Coordinators
Government Services	Air Ambulance Programme Legislative Power Plant Water/Wastewater Management Services

Ministry (Column 1)	**Service/Programme** (Column 2)
	Building Access/Security
	Saskatchewan Hospital Power Plant
	Valley View Centre Power Plant
	Activities related to the prevention of destruction or serious deterioration of machinery, equipment or premises in support of the services set out in this table, including the services provided by the Government of Saskatchewan at the facilities, by the organizational units or for the purposes of the programmes set out in this table.
Health	Saskatchewan Disease Control Laboratory
	Health Emergency Management Branch
	Health Information Solutions Centre
Highways and Infrastructure	Winter Snow and Ice Control
	Highway Hotline for Road Information
	Equipment Maintenance
Information Technology Office	Support for systems related to the services set out in this table, including the services provided by the Government of Saskatchewan at the facilities, by the organizational units or for the purposes of the programmes set out in this table.
Justice and Attorney-General	Court Services Branch
	Victim Services Branch, Victim/Witness Services
	Public Prosecutions
	Fine Collection Branch
Social Services	Child Protection/Foster Care
	Emergency Social Services
	Youth in 24-hour facilities
	Community Living Division – Valley View Centre (laundry, food services, resident care, physical therapy, housekeeping, dental clinic, medical equipment repair, drivers)
	Community Living Division – Community Resources (Northview Home, Southview Home, Crisis Therapy, Community Intervention, Community Service)
Tourism, Parks, Culture and Sport	Water Systems in Provincial Parks

368. *The Committee notes that the Public Service Essential Services Act requires a public employer and a trade union to negotiate an ESA at least 90 days before the expiry of the collective bargaining agreement (section 6(1)). For the purposes of negotiation, a public employer other than the Government of Saskatchewan shall advise the trade union of those services that it considers essential (section 6(2)). For the purposes of an ESA between the Government of Saskatchewan and a trade union, the prescribed services, i.e. those prescribed in the regulations, are the essential services (section 6(3)). An ESA must include provisions that identify essential services that are to be maintained during the work stoppage and provisions that set out the classification, the number and the names of employees in each classification who must continue to work during the work stoppage to maintain essential services (section 7(1)). If there is a work stoppage or a potential work stoppage but no ESA concluded between the public employer and the trade union, the list of essential services to be maintained, the classification, the number and the names of employees who must continue to work to maintain essential services are notified by the public employer to the trade union (section 9). The trade union concerned may apply to the*

LRB if it disagrees on the number of employees in each classification who must work to maintain essential services, as set out in the notice (section 10).

369. *From the above, the Committee understands that for the purposes of the Act, an "essential service" is not a service where strikes are entirely prohibited, but rather where some kind of minimum services are to be maintained. What constitutes an essential service is to be determined through a negotiation between a public authority and the union concerned, in line with the definition provided for in section 2 of the Act, except where the employer is the Government of Saskatchewan, in which case, essential services are provided for by the relevant regulations, which should also be in line with the definition provided for in section 2. The classification of employees, the number and names of employees are further to be determined through negotiation.*

370. *At the outset, the Committee recalls that the right to strike may by restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see* ***Digest****, op. cit., para. 576].*

371. *The Committee recalls that a minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruptions [see* ***Digest****, op. cit., para. 607]. The Committee considers that the definition of essential services where a minimum service is to be maintained as provided under section 2 of the Act may satisfy these criteria. With regard to the list contained in the Regulations, the Committee considers that certain services, such as licensing of boiler and pressure vessels, licensing of private investigators and security guards, laundry and drivers in community living division – Valley View Centre should not be unilaterally declared as "essential" where minimum services must be maintained. The Committee notes that allegedly the Regulations were unilaterally enacted by the provincial Government ten days after the issuance of an arbitration award concerning the essential services designation, rendered on the basis of a Memorandum of Understanding signed by the provincial Government and a bargaining unit, which provided for recourse to arbitration in the case of a disagreement over the designation of essential services. The complainants allege that the Regulations contain a longer list of essential services than the list included in the award. It therefore requests that this list be amended in consultation with the social partners and to be kept informed of developments in this respect. It draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

372. *The Committee further recalls that the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a full and frank exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services [see* ***Digest****, op. cit., para. 612]. The Committee considers that a requirement to negotiate an ESA is in conformity with the principle above.*

373. *The Committee notes, however, the complainants' allegation that under the Act, there is no incentive for the employer to successfully negotiate an ESA with the union as the Act provides for an eventuality of absence of an ESA (section 9) in which case, the employer*

has an automatic right to serve notice to the union as to the classification, the number and the names of employees it considers essential, i.e. unilaterally designate a list of essential services employees. The provincial Government disagrees with this contention stating that an employer may not refuse to negotiate an ESA and wait to serve notice pursuant to section 9 of the Act, as with any collective bargaining, there is a duty imposed on both parties to bargain in good faith. Moreover, recourse may be had to the LRB in the event that a party refuses to bargain in good faith. The Committee notes that according to the complainants, in practice, since the enactment of the Public Service Essential Services Act, the major public sector unions, including in the health-care sector, have been without collective agreements since March–May 2008, because employers would not proceed with collective bargaining without unions agreeing first to the lists of the proposed essential services.

374. *The Committee notes that in the absence of the ESA, essential services, the classification, the number and names of persons who must work during the work stoppage to maintain essential services are determined by the public employer and are notified to the union concerned. If the union disagrees with the number of workers required to work, it can apply to the LRB. It appears, however, that under the terms of section 10 of the Public Service Essential Services Act, neither the determination of what constitutes an essential service, nor the classification of workers and their names can be challenged before the Board, only the number of workers required to work may be reviewed.*

375. *In this regard, the Committee considers that essential services in the strict sense of the term and public services exercising authority in the name of the state, and as worded by section 2(c)(i) (A) and (D) may be subject to the unilateral determination of the Government insofar as they are consistent with the principles elaborated by this Committee with respect to essential services. As regards sections 2(c)(i)(B) and (C) and 2(i), the Committee considers that the determination of the sectors in question, classification, number and names of workers who must provide services should either be the result of a freely negotiated ESA or, where this is not possible, be reviewed by an independent body having the confidence of the parties concerned. The Committee recalls that a definitive ruling on whether the level of minimum services was indispensable or not – made in full knowledge of the facts – can be pronounced only by the judicial authorities, in so far as it depends, in particular, upon a thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action [see **Digest**, op. cit., para 614]. The Committee considers that the LRB may serve as such an independent body but requests the Government to ensure that the provincial authorities amend the legislation as it is currently drafted so as to ensure that the Board may examine all the abovementioned aspects relating to the determination of an essential service and may act rapidly in the event of a challenge arising in the midst of a broader labour dispute. In this regard, the Committee expects that the LRB will bear in mind the principle according to which the determination of a minimum service should be clearly limited to the operations which are strictly necessary to meet the concerns set out in section 2(c)(i) and (ii) while ensuring that the scope of the minimum service does not render the strike ineffective and that it will further give due consideration to the concerns raised by the complainant in relation to the designation of trade union officers for required work. Finally, the Committee wishes to recall that it would be highly desirable for actions to be taken wherever convenient so that the negotiations on the definition and organization of the minimum service not be held during a labour dispute so that all parties can examine the matters with the necessary full frankness and objectivity.*

376. *Furthermore, the Committee notes that, according to the complainants, the Government failed to provide access to an independent arbitration mechanism for those public employees who are negatively impacted by essential services legislation. In this respect, the Committee notes the Government's indication that employees engaged in services*

identified as essential are entitled to wages and benefits as established in the relevant collective agreement. The Committee further notes that according to the complainants, in a written submission dated 31 March 2009, the Saskatchewan Government argued that an arbiter has no jurisdiction to award compensation to workers who had lost their right to strike. The Committee recalls that, where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services. As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned have confidence and can take part at every stage and in which the awards, once made, are fully and promptly implemented [see ***Digest****, op. cit., paras 595 and 596]. The Committee requests the Government to take the necessary measures in order to ensure that such compensatory guarantees are made available to workers whose right to strike may be restricted or prohibited. It requests the Government to keep it informed in this respect.*

377. *With regard to the Act to Amend the Trade Union Act, the Committee notes that the complainants allege that the new amendments weaken freedom of association and collective bargaining rights in Saskatchewan. In particular, the complainants point out that under the amended Act, automatic certification of the union as the most representative has now been eliminated in cases even where a union has demonstrated to have signed union cards from a majority of workers in a bargaining unit. Instead, regardless of how many workers sign union cards, a secret ballot supervised by the LRB is required before certification can occur. A minimum of 45 per cent cards signed within 90 days before a certification vote can take place is also required (previously 25 per cent of cards signed within six months was sufficient to trigger a secret ballot vote). The provincial Government, on the other hand, considers that secret ballot voting protects the right of workers to freely exercise their choices and is an integral part of the democratic system. It does not consider that the 45 per cent support requirement for beginning the process of a certification election is too high as the quorum of votes required for certification remains unchanged at 50 per cent plus one of votes cast.*

378. *The Committee recalls that a system of collective bargaining with exclusive rights for the most representative trade union is compatible with the principle of freedom of association. Furthermore, the determination to ascertain or verify the representative character of trade unions can best be ensured when strong guarantees of secrecy and impartiality are offered. Thus, verification of the representative character of a union should a priori be carried out by an independent and impartial body [see* ***Digest****, op. cit., para. 351]. While representativity may be determined by the number of members or by a secret ballot, the Committee considers that a secret ballot supervised by the LRB may be consistent with the principles of freedom of association as long as it has the confidence of the parties.*

379. *However, the Committee is of the opinion that, in the particular circumstances of the case, the law stipulating that a trade union must receive the support of 45 per cent of employees before the procedure for recognition as a collective bargaining agent may well be excessively difficult to achieve. In this regard, the Committee observes that section 8 of the Trade Union Act, currently as in the past, provides that "a majority of the employees eligible to vote shall constitute a quorum and, if a majority of those eligible to vote actually votes, the majority of those voting shall determine the trade union that represents the majority of employees for the purpose of bargaining collectively". The change as to the support for a union necessary in order to conduct a requisite secret ballot actually means that the union needs to demonstrate more support in order for a ballot to be conducted then it will need ultimately to be certified on the basis of the vote (i.e., 50 per cent of 50 per*

cent (the necessary quorum) is only 25 per cent of all employees). The Committee requests the Government to ensure that the provincial authorities take the necessary measures to amend the Trade Union Act so as to lower the 45 per cent support requirement for beginning the process of a certification election. It requests the Government to keep it informed in this respect.

380. *With regard to the complainants' allegation that by allowing employers to communicate to their employees not onl y facts but also opinions, the legislation legalizes employers' interference in trade union activities, the Committee notes that the Government of Saskatchewan stresses that while the amendment clarifies that an employer can communicate facts and opinions to its employees, he or she remains prohibited from interfering with the exercise by employees of any rights under the Trade Union Act and from any acts of restraint, intimidation, threats or coercion; any such violation may be brought before the LRB, which has interpreted the legislation as to mean that an employer cannot communicate in any manner to employees during a certification drive.*

381. *The Committee notes in fact that section 11(1)(a) of the Act provides for the following:*

> *11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*
>
> *(a) to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating facts and its opinion to its employees.*

The list of what constitutes an unfair labour practice by an employer further includes: discrimination or interference with the formation or administration of any labour organization, financial contribution or other support (subsection b); failure or refusal to bargain collectively with elected or appointed representatives (subsection c); discrimination in regard to hiring or tenure of employment or any term or conditions thereof or use of coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity of a trade union (subsection e); interference in the selection of a trade union as a representative for the purpose of bargaining collectively (subsection g); collective bargaining with a company dominated organization (subsection k); interrogation of employees as to whether or not they have exercised any right conferred by the Act (subsection o); etc. The Committee further notes section 15 of the Act which provides for penalties imposed on individuals and corporations committing unfair labour practices ranging between CAD50 and CAD1,000 in the case of an individual and CAD1,000 and CAD10,000 in the case of a corporation. In these circumstances, the Committee firmly expects that the application of the latest amendments in conjunction with the protection still awarded under section 11(1)(a) of the Trade Union Act will ensure effective protection of the freedom of association rights of workers and their organizations.

382. *The Committee notes the LRB is the body responsible for adjudicating disputes arising under the Trade Union Act and the Public Service Essential Services Act. The Committee further notes that the complainants questioned its independence following the recent nomination of a new chairperson and vice-chairpersons. This case is now pending before the judicial authorities. The Committee recalls that in mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned [see **Digest**, op. cit., para. 598]. Without taking a position as to the independence of the LRB as currently constituted, the Committee draws the provincial*

Government's attention to the need to ensure that the members of bodies entrusted to administer labour relations legislation enjoy the confidence of all parties and are impartial and are seen to be impartial. The Committee therefore requests the Government to encourage the provincial authorities to endeavour, in consultation with the social partners, to find an appropriate means of ensuring that the LRB enjoys the confidence of all the parties concerned.

383. *The Committee notes the complainants' allegations with regard to the new Trespass to Property Act and the provincial Government's reply thereon. The Committee trusts that the right of individuals to engage in lawful picketing will not be affected by this Act.*

The Committee's recommendations

384. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee expects that the Government will ensure that the provincial authorities hold full and specific consultations with the relevant workers' and employers' organizations in the future at an early stage of considering the process of adoption of any legislation in the field of labour law so as to restore the confidence of the parties and truly permit the attainment of mutually acceptable solutions where possible.

(b) The Committee requests the Government to ensure that the provincial authorities take the necessary measures, in consultation with the social partners, to amend the Public Service Essential Services Act so as to ensure that the LRB may examine all aspects relating to the determination of an essential service, in particular, the determination of the sectors in question, classification, number and names of workers who must provide services and act rapidly in the event of a challenge arising in the midst of a broader labour dispute. The Committee further requests that the Public Service Essential Services Regulations, which sets out a list of prescribed essential services, be amended in consultation with the social partners. It requests the Government to provide information on the measures taken or envisaged in this respect.

(c) The Committee requests the Government to ensure that the provincial authorities take the necessary measures so that compensatory guarantees are made available to workers whose right to strike may be restricted or prohibited and to keep it informed in this respect.

(d) The Committee requests the Government to ensure that the provincial authorities take the necessary measures to amend the Trade Union Act so as to lower the requirement, set at 45 per cent, for the minimum number of employees expressing support for a trade union in order to begin the process of a certification election. It requests the Government to keep it informed in this respect.

(e) The Committee requests the Government to encourage the provincial authorities to endeavour, in consultation with the social partners, to find an appropriate means of ensuring that the LRB enjoys the confidence of all the parties concerned.

(f) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.