STANDING COMMITTEE ON HUMAN SERVICES

Hansard Verbatim Report

No. 8 – April 24, 2008

Legislative Assembly of Saskatchewan

Twenty-sixth Legislature

STANDING COMMITTEE ON HUMAN SERVICES

Mr. Glen Hart, Chair
Last Mountain-Touchwood

Ms. Judy Junor, Deputy Chair
Saskatoon Eastview

Mr. Denis Allchurch
Rosthern-Shellbrook

Mr. Cam Broten
Saskatoon Massey Place

Ms. Doreen Eagles
Estevan

Mr. Serge LeClerc
Saskatoon Northwest

Mr. Greg Ottenbreit
Yorkton

Published under the authority of The Honourable Don Toth, Speaker

[The committee met at 14:00.]

The Chair: — Good afternoon, committee members. Our time for start is here. This afternoon we will continue our consideration of Bill No. 6, The Trade Union Amendment Act. And after the recess at 5 o'clock, we will then turn our attention to the consideration of Bill No. 5, The Public Service Essential Services Act.

Committee members, it's not on our agenda but it is my intention at approximately 3:30 to take a 10-minute break. I feel that perhaps three hours straight is maybe a little bit too long and that we will maybe need a 10-minute break. So around 3:30 we will break in between the question and answers and so on.

I would make committee members aware that we have at least one substitution, Mr. Iwanchuk for Mr. Broten, and Ms. Morin will be substituting for Ms. Junor.

We have Minister Norris with us and his officials. And, Minister Norris, I would once again ask you to introduce your officials, and then I believe we will be ready to reconsider Bill No. 6. The minister.

Bill No. 6 — The Trade Union Amendment Act, 2007

Clause 1

Hon. Mr. Norris: — Mr. Chair, thank you. Legislative colleagues, I appreciate the opportunity to rejoin you. And once again I'd like to introduce our deputy minister, Wynne Young; Mike Carr, our associate deputy minister, labour employee and employer services division; Mary Ellen Wellsch, the acting executive director for labour, planning, and policy. And as well Pat Parenteau, our senior policy analyst within the Ministry of Advanced Education, Employment and Labour is also with us today. And once again I'm happy to be joining this committee.

The Chair: — Welcome, Minister, to you and your officials. And I would at this time open the floor for members' questions, I should say, from committee members. I recognize Mr. Iwanchuk.

Mr. Iwanchuk: — Thank you, Mr. Chair. I've had time to look at some of the proceedings, and perhaps we would go over some ground, but this is just questions of, you know, clarification or maybe just our answers weren't quite clear and if we do that . . . just a bit more on the consultation process on there.

I understand this has been raised, but I would like, for the record, the issue that I'd like to raise here is the consultation and the letter to Mr. Dale Lindemann from the Premier's office, where Mr. Lindemann has requested attendance at a forum on Bills 5 and 6 and Labour Council to be held on April 21, and which would allow feedback, consultation of stakeholders.

And in there, in his letter, the Premier, in reply to the letter lays out the numbers of, 84 letters listing feedback. Mr. Norris and ministry officials have held meetings of 20 stakeholders, and then Minister Norris has met twice the Saskatchewan Federation of Labour president, Larry Hubich, advertisements soliciting feedback, and government MLAs [Member of the Legislative Assembly] met with 17 representatives. The issue that I want to raise here . . . and then there's a letter back to Premier Wall from Larry Hubich, president of the Saskatchewan Federation of Labour where he talks about misrepresentation about the government consultations. If I could just ask the minister to again repeat how many times he has met with Mr. Hubich.

Hon. Mr. Norris: — Thank you, Mr. Chair. The question is premised on a letter. And I don't know if committee members have access to that letter. I wonder if the member, if it would be appropriate that that letter be shared. Mr. Chair, I leave that to you as we begin to address this question.

The Chair: — I believe Mr. Iwanchuk is indicating that he would be prepared to table that letter. And if Mr. Iwanchuk would like to do so, I would instruct him to pass that information along to the Clerk and copies will be made for committee members.

Mr. Iwanchuk: — Mr. Chair, I'll be reading more from this letter, so perhaps we could just . . . How long will it take to get copies made?

The Chair: — Perhaps, Mr. Iwanchuk, you could move on to another question.

Mr. Iwanchuk: — Well I think this sort of follows through.

The Chair: — Oh okay. Why don't you read it into the record? Or would you like to . . . Well carry on with your questions. At the end, when you are done with your questions pertaining to the letter, perhaps we could then have it tabled.

Mr. Iwanchuk: — Okay. I wasn't clear whether the minister wasn't aware of this letter, or is that the problem? Because the minister is answering the questions.

The Chair: — Mr. Minister.

Hon. Mr. Norris: — I'm more than happy to. It was mostly a procedural question, Mr. Chair. That is, I'm not certain my colleagues around this table have actually seen or had access to that letter. It's being referred to within the committee, and I just wonder what the procedure is to attempt to ensure that committee members have access to this.

The Chair: — I believe the procedure, Minister, is if a member wishes to table some information that he or she has in their possession, they may do so. They are not required to do so. I believe Mr. Iwanchuk has indicated that once he is done with his set of questions pertaining to the letter that he, I believe, is prepared to table it. I recognize Mr. Iwanchuk. I believe he has some comments.

Mr. Iwanchuk: — I could go on to another question, and as long as this isn't going to take five minutes or . . . Yes. So we could, why don't we do that now? I will just simply move on to another question, if we could just have copies.

The Chair: — Certainly, Mr. Iwanchuk. If you'd like to do

that, the Clerk will arrange to have the letter copied. I believe the minister would like to enter into the discussions. Mr. Minister.

Hon. Mr. Norris: — Just wondering on the procedure for moving to a second question. Shall I address the question that's been asked, the query that's been presented, or shall I . . .

The Chair: — I think for the interests of clarity and so that the rest of committee . . . Now that they will be provided with a copy of the correspondence that Mr. Iwanchuk is referring to, I think it would be probably best that we wait. I believe Mr. Iwanchuk will be returning to those set of questions, and perhaps we'll have Mr. Iwanchuk ask his next question. We'll move on, and once everyone has the copies of it, then we will take, Mr. Iwanchuk's lead, and if he so chooses, we'll go back to that correspondence.

Mr. Iwanchuk: — And this would be following the letters, in terms of the letters, could you explain how you would communicate? What communication would be done between you and the Premier?

Hon. Mr. Norris: — Without, again without having a letter, I will speak very broadly of relationship of the governing structure within parliamentary system. Obviously because there's a fusion of executive and legislative authority that serves as the foundation of responsible government within Canadian context, there would be different levels of analysis to that kind of relationship.

So you would envision that there could be direct contact at one level between the Premier and one of his ministers. You could then have contact between the respective offices — that is, the office of the Premier, the office of a minister. Obviously contact could also be within the context of cabinet or other executive structures and functions of government.

You could have contact through the caucus process. That is, we all are MLAs first and foremost. Then of course there can be contact through Executive Council into any given ministry so the levels of analysis . . . I've just offered five samples, not exhaustive, but reflective of how that relationship between a Premier or Premier's office and a minister or a minister's office or ministry could take place again without the specific letter and reference. This is simply what we might call a taxonomy or typology as far as what avenues, formalized avenues those could be.

The Chair: — Oh okay. The Page will be distributing the documents, so we'll just wait until that's done, and then we will continue. I recognize Mr. Iwanchuk.

Mr. Iwanchuk: — So back to my question of how many times have you met with Mr. Hubich?

Hon. Mr. Norris: — I appreciate the question. The question should be contextualized that the first letter sent from my office was to Mr. Hubich. There have been two meetings with Mr. Hubich. There was a meeting on December 6. That December 6 meeting was an introductory meeting. And there was also a February 6 meeting, the emphasis of the February 6 meeting being the legislation being considered today.

Mr. Iwanchuk: — The letter from the Premier to Mr. Lindemann on the second page says, "Minister Norris has met twice with the Saskatchewan Federation of Labour President Larry Hubich to discuss the legislation." Now where would he get that information?

Hon. Mr. Norris: — The question is a good one, and I'll just consult as far as the actual trajectory of the specific letter.

The question — it's a curious question — speaks to the trajectory, but I think the essence of the question is actually attempting to drill down into this point, if it's the same point. I'll quote, "Minister Norris has met twice with Saskatchewan Federation of Labour President Larry Hubich to discuss the legislation." If I'm not mistaken, it's to turn and say, was the legislation part of both meetings? And the answer is yes. Within the first meeting there was a general discussion, and in the second meeting there was a much more focused dialogue on the legislation.

So if you're looking for, if there is an interest in the empirical accuracy, while the line may be somewhat narrow — that is, in the first meeting there were other issues addressed as well — it's still empirically accurate in that the said legislation was discussed. We can empirically verify this as we can go to a December 7, 2007, story based in *The StarPhoenix* where, and I will quote, "Hubich said the meeting with Norris was cordial and respectful but said he told the minister the labour movement was concerned about the oncoming legislation as it significantly strips the rights of workers."

So again if the question — and perhaps I've misinterpreted the question — but if the essence of the question, if the essence of the question relates to the empirical element of these meetings, then we can be confident to turn and say, based on, not just my word, but in fact this external, empirical evidence "oncoming legislation" — that's a quote — was discussed during that meeting, that initial meeting.

As I've said there were a number of issues that were discussed, and the second meeting, that is the February meeting, certainly had a much more refined and concentrated focus on these two pieces of legislation. Again if I've misunderstood the nature of your question, I'm happy to re-examine it.

Mr. Iwanchuk: — Now I just to — because I don't have *The StarPhoenix* story in front of me — is it a direct quote from you or Mr. Hubich or . . .

Hon. Mr. Norris: — No, it's from James Wood. It's was on page A3, and I'm sorry to do . . . I'll contextualize a little bit here for the sake of everyone.

There's talk about essential service legislation. That's the focus of the article. The line is simply written in, that is there are no direct quotations, but again as it, as it appears within the article, it might have said Mr. Hubich, but in this case it just simply says and this is quote, "Hubich said the meeting with Norris was cordial and respectful but said he told the minister the labour movement was concerned about the oncoming legislation as it significantly strips the rights of workers." The next line he said, "He said unions in Saskatchewan have a strong record of providing essential services during job action

without legislation."

So it's obvious that the context within which this is made relates to the essential service legislation specifically. And as I've said, there have been two meetings. I know there are perhaps rumours or reports that there has not been a meeting. Individuals have come up to me and asked that very question, and for the record I want to ensure the accuracy. The morning of December 6 and the morning of February 6 I have participated in two meetings directly with Mr. Hubich. Obviously I have been in other settings where he has been. The CUPE [Canadian Union of Public Employees] convention — he was there as well. But in this instance these are two very specific meetings. And again on the first meeting, there were very general comments. It did come up, for the record. In the second meeting it was the principle focus of that session.

Mr. Iwanchuk: — And again it obviously was of some concern to Mr. Hubich to raise it in a reply letter which you got because . . . I'm wondering. It is quite direct. Mr. Norris has met twice with the Saskatchewan Federation of Labour President Larry Hubich to discuss the legislation, to discuss the legislation. And I guess that's what my question is is how, then, would your meetings be reported back to the Premier's office to have him sign this letter? Does he pass it by you again? Where is the information flow there?

The Chair: — Mr. LeClerc.

Mr. LeClerc: — I need to have a word on this because if you, Mr. Iwanchuk, are referring to a letter and using the letter from Mr. Hubich as some sort of official document that has inherently no errors in it . . .

Mr. Iwanchuk: — Mr. Chair?

The Chair: — Are you raising a point of order? Mr. Iwanchuk.

Mr. Iwanchuk: — The member is asking me questions. I mean what is the point of order, you know, and it should be addressed to the Chair first off. But the member is asking me questions. We have a document before us. I'm asking questions off the document. It's pertaining to the legislation — around Bills 5 and 6 — and I'm not certain why he is questioning me. I'm doing the questioning here; the minister is answering. If he wants to ask questions, he can. Otherwise he should speak to the Chair and only to the Chair, and I don't need to listen to any questions from him.

The Chair: — Thank you, Mr. Iwanchuk. In fact Mr. Iwanchuk is correct that comments should be made to the Chair. When members are recognized, they can ask their questions and comments to the Chair. Committee members are not witnesses. It's certainly appropriate for a committee member to make a statement on the issue that is before the committee, but it is not appropriate for . . . This is not the 75-minute debate, question and answer period, and so I would ask committee members to observe the appropriate decorum and rules of debate.

Mr. LeClerc: — Then I have a point of order because in this letter from Mr. Hubich, there is an untruth in the letter that I personally know, and I'm not sure that this is a document that should be used to question our minister. It's stating here about a meeting between Mr. Hubich and 17 labour leaders that I was part of that meeting.

We in fact in this Human Services Committee was part of that meeting, and there is untruths in his statement in that they stated they were unknowledgeable of the changes to labour legislation. We never said that. And so I'm not sure that this can be used as a basis of inquiry to our minister. I think the letter certainly from our Premier can be, but I hesitate to say that the letter from Mr. Hubich can be used as a form of inquiry or as a basis for inquiry due to its inherent inaccuracies within the letter.

The Chair: — Mr. LeClerc, I believe the point you raised is not a point of order. Points of order are to pertain to procedure. The point you raised is a point of debate, and so I'll accept that as a point of debate. It is not a point of order.

So I would just ask . . . Mr. Iwanchuk has further questions, we will continue with the examination. Thank you. Mr. Iwanchuk.

Mr. Iwanchuk: — I guess my question again then is, how would the report of meetings between you and Mr. Hubich . . . And we've got statements from you saying one was introductory, or you dealt with the issue of that, I guess. So then the follow-up question is, how would this be reported so that the Premier of Saskatchewan would then sign a letter to which we would get, a letter saying that, you know, this isn't true?

So I guess the reporting between you and the Premier or the Premier's office as to why he would write in there that you met twice with . . . We've got two meetings. You know, we can argue about what happened at the meetings and . . . But how did two reported, or how did you report to the Premier or the Premier's office that they knew that you had met twice with Mr. Hubich?

Hon. Mr. Norris: — Once again the question . . . it's a compounded question. It's a complex question, so I'm going to deconstruct some elements of it.

There're obviously, as I've gone through, there are multiple levels of relationship between a Premier and a minister's office. The piece here, what I have just offered is, I believe, empirical evidence. And I will soon — as the deputy minister participated in that first meeting — I'll turn to our deputy minister shortly.

But it's to turn and say, if there's a question regarding the bullet point, Minister Norris and ministry officials . . . sorry, the next bullet, "Minister Norris has met twice with Saskatchewan Federation of Labour President Larry Hubich to discuss the legislation," the legislation was discussed in both meetings. If your reference point — and again, if I'm misinterpreting this, please, please let me know, and I'm happy to back up on this to make sure I'm addressing your question — if the reference point is this second paragraph where it says, "This is just not true!", then what I have offered, what I have offered here is empirical evidence, third-party evidence that turns and says . . . and obviously again, the first reference of this empirical evidence being offered through *The StarPhoenix*, December 7, where Mr. Hubich is concerned about the oncoming legislation that quote ". . . he told the minister the labour movement was concerned about the oncoming legislation . . ."

So it's just to simply reinforce that the validity and accuracy of the Premier's letter regarding that statement holds. And I can only say that it reinforces and reflects the functioning of obviously a relationship between a Premier's office and a minister's office that allows for the transferral of information. And that information grounded here empirically in an external source is reinforced.

And I'll now ask the deputy minister who participated in that first meeting to actually speak to that meeting and with reference to Bills 5 and 6.

Ms. Young: — Thank you, Minister. Yes I can confirm that I was not only at the first meeting but the second one with Mr. Hubich. One was before the tabling of the new Bills, and one was obviously after.

In the first meeting, obviously we weren't referring to Bills 5 and 6. At that time they had not yet been introduced, but there was . . . Mr. Hubich certainly did discuss with us the concern that they had about upcoming legislation, and he and his colleague, you know, made the case of their concern around it.

And certainly the following one meeting that happened after the legislation was obviously more detailed, once they had a chance to react to the pieces. And that was part of the formal consultation that came after Christmas. So yes, I was at both, and Mr. Hubich and a colleague were in both.

Mr. Iwanchuk: — I guess my point is still is, in Mr. Hubich's letter for some reason he obviously feels this is not true. There was mention here of a colleague or was this a group at the meeting?

Hon. Mr. Norris: — I can confirm that in the first meeting, Mr. Hubich was accompanied by a colleague. I don't have access to the records right here as far as who that colleague was.

But it's to turn and say there is . . . I appreciate the question, but we have my recollection. We have the deputy minister's recollection. We have specific reference in *The StarPhoenix* that makes reference to essential service legislation. We have specific reference that again he told the minister the labour movement was concerned about the oncoming legislation. And so if Mr. Hubich has an interpretation then obviously he has an interpretation.

But I would posit and offer before this committee that there is an empirical record and that empirical record is reflected within the letter from the Premier. In the first meeting, again to repeat, there were other issues covered, but the legislation was addressed more broadly speaking. And obviously the second meeting, the legislation was addressed with greater concentration and specificity. So I should note I believe there is a typo in the letter, and we will work to ensure this is clarified as appropriate. Further down there is mention of a February 6; that should read simply, February 26. And I think Mr. Hubich makes mention of this. Yes, he makes mention of that typo.

But again if the core of the question, if the core of the question relates to a gap between my office and the Premier's office, I reject the premise. If the question then builds upon, was the legislation brought up? I think I have offered significant evidence, very significant evidence that in fact, in broad terms, yes, in both meetings.

If there's a third element of this question out beyond the typo — and again we'll address that regarding the date; Mr. Hubich addresses that — then I'm happy to take the next question. But having demonstrated there have been two meetings, legislation was the focus of the two meetings — the first in part, the second one in concentration — then I simply say the initial request query regarding the communications methodology between my office and the Premier can best be addressed on a theoretical basis because there appear to be a few grounds for which to be concerned with that relationship.

Mr. Iwanchuk: — Just a further question then, questions on Kevin Wilson again. Did he write the legislation?

Hon. Mr. Norris: — I certainly appreciate the question regarding Mr. Wilson. I'll restate that Mr. Wilson is a highly respected legal practitioner within Saskatchewan, respected across Canada for the work that he's done. The question . . . and it's a helpful question, a little bit curious because we have addressed this. And it's been first addressed in a written response that came through the House, that came through our legislature. The key element here is that the response regarding the drafting of the legislation was that there were 10 legal experts within the Ministry of Justice that worked on drafting this legislation. So I want to, I want to reiterate and we may be able to find actually the written submission that was offered in House.

I want to just reiterate that this legislation was drafted within the Ministry of Justice. Obviously input was available and considered from our ministry, from Executive Council, but the drafting of the legislation was done within the Ministry of Justice.

This I should contextualize and perhaps I may. The NDP [New Democratic Party] between 2000 and 2007 drew on outside advice, legal and otherwise, as available through public accounts. And I'll go through some elements of this with some detail to help contextualize this piece. But between 2000 and 2007, $14.589 million, thereabouts — I'll round it — so well over fourteen and a half million dollars. 2000-2001 over $400,000; 2001-2002 over $1.8 million; 2002-2003 over $1 million; 2003-2004 over $3.3 million; 2004-2005 almost $4 million; 2005-2006 almost $4 million; in 2006-2007 over $3 million. These are available through public accounts, but it is to turn and say that practice has been that outside advice and expertise has been called upon.

Perhaps I will offer some additional examples, specific examples. There is an individual appointed to help oversee measures responding to flooding at Fishing Lake, Waldsea Lake. That individual from April 30, 2007, to November 1, 2007, billed in addition in excess of $200,000. Another individual had a position of a CEO [chief executive officer] of Crown Management Board, paid well over $400,000 for a 13-month contract.

For the record in *Hansard*, one of the former MLAs here, former cabinet minister, Mr. Eldon Lautermilch, when asked about the high rate of pay said simply that, we paid the

individual, and I'll just use the term individual here, "based on the fees that a senior lawyer in this province would receive for the similar kind of work." So what I've tried to do is offer specific reference to the question, that is the Ministry of Justice drafted this legislation. I certainly appreciate the work that Kevin Wilson has undertaken, the research and advice that he's offered, and this is quite consistent to have external advice offered. And I've tried to go through some specific examples that members around this committee would be familiar with.

Mr. Iwanchuk: — Thank you, Mr. Chair. And again I'm not certain the minister answered the question, but there were questions. I simply asked who wrote the legislation.

My question would be in terms of a process that the government uses, and obviously we've had an amended Bill 24, and there's some questions here in terms of this government again today in the House maybe shooting first, asking questions later, in terms of drafting legislation we have before us here. There's research done. We've paid for it. We now have to put in amendments. The Bill is now stuck in second reading, in adjournment. I think under academic standards, one might say this is rather shoddy work.

Now again there's no answer as to whether Mr. Wilson's involved in that, whether he is not. We can't seem to get an answer here as to who is doing this. But I guess we spend money. And if there's accountability questions, we can't get answers, I guess, and we simply talk about previous government budgets.

But I know the minister has quite, seemed to be quite proud of the fact that he mentioned he was a political scientist and that he had to do research, and I imagine scientific research. Now I'm not going to put myself in that category in terms of doing that. And so I imagine he studied the research regarding these Bills, I would think, as minister, thoroughly understanding the processes involved, certainly understanding certification and communication which are part of these Bills. I don't know whether he looked at the final Bill, that he needed the extra amendments after his advice.

We don't know whether it was Mr. Wilson or whether it was the Justice department that, you know, dropped the ball on this. But whatever. I know that he is . . . I wouldn't question his integrity in this or his ability to apply his skills in this area. And I know I would just . . . just to be able to ask him a few questions. I would like to read a statement and then just see his reply to it, if he could answer this reply. Number one:

> Canada's unionization rate of (31.8%) remains more than twice that of the United States (13.8 . . .). Similar patterns hold when employment is broken down between the private and public sectors.

I would just . . . Any comments, whether you've ever read that, heard about it, agree, disagree?

Hon. Mr. Norris: — I will try to comprehend the question. I will try to comprehend it. There were elements of the preamble that certainly pass curious. The legislation under debate, discussion, and deliberation today is The Trade Union Amendment Act, 2007. There were some slighting comments about the legislation which I find puzzling at best. And I'm happy to . . . maybe I have misinterpreted those and hopefully I have.

The one element of the question relating to my academic or professional background I'm happy to speak to. I'm not certain of its particular relevance to these Bills but that's all right. For the public record, and it's on the public record, I certainly have been a student of political science, political studies. I have . . . a graduate of a college, Red Deer College. I studied for two years. I then transferred to the University of Lethbridge where I graduated with distinction with a degree in political science. I then studied at the University of Saskatchewan as a graduate student. I transferred my studies to the University of Alberta, part-time student, where I graduated with a master's degree in political science.

The subfields of study, again I think on the public record . . . during my undergraduate work I did two what I'll call individual or specialized projects or independent studies. Those were the equivalent of undergraduate theses. I did two of them: one focusing on American foreign policy, the other one focusing on First Nation and Métis youth on a comparative basis between Canada and the United States, focusing on frameworks of action and empowerment. At the graduate level, my key area of focus related to international relations and Canadian foreign policy but informed by various courses in comparative politics as well. My graduate project focused on Canada's decision to join the Organization of American States. The OAS evolved out of the Pan-American Union. My research was extensive in that area, and I won't get into the details of it.

So again if this helps clarify the public record, then I'm happy to do that. In fact I'll speak more in depth about the decision. It may have been instructive. But the nature of the question, the nature of the question, preamble aside . . . And it was a curious preamble, and unfortunately I think what the preamble did was set in motion something that may be classified or categorized as an ad hominem fallacy. That is, the pursuit of knowledge — a long-held trait, feature that's been spoken about since Plato and Aristotle and probably well before — suddenly becomes wrapped up in either an implicit or explicit attack on an individual. This is unfortunate, not uncommon, especially in the political realm. I think sometimes we're all tempted.

But the key is to identify it for what it is. It's a fallacy. It offers the blurring of that quest for knowledge and blurs it with an attempt to confuse an idea with someone's identity. And we can simply look at the 20th century for various instances where that has been used destructively.

So I would hope that we can move beyond ad hominem fallacies and attacks. And if we were to simply look at the specific question without the perplexing preamble, then we would turn and say, you're asking about what? What is it that you're asking about? Are you asking me to offer a reference? A page number? A paragraph reference? An author? Would you like me to offer to you — and I'm prepared to do this — any number of related statistics?

Mr. Chair, I guess to the question I say, I appreciate the insight, if that's what it is. If this is a game of true or false, please let me know. If this is something akin to parliamentary *Jeopardy!*, tell

me what the rules are and what the rewards are. But if there's some purpose, some pathway, some connection between that specific question and where we are going regarding Bill 6 and what we have called the democratization of the workplace, then I will simply plead modesty, looking at the parliamentary tradition to turn and say we come not as experts in any field, but we come as public servants. We draw upon the expertise and resources of our officials, and we, all of us in public life, do our very best to move towards a notion of that good life or provincial interest or any other reference point that informs public service.

So I guess I will simply ask if a question could be phrased or framed by the member that would allow me to respond, and if the question is, am I familiar with the broad contours, the state and fate of the labour movement within a North American context, then I will simply say, reasonably. Reasonably.

I wrote a review of this book — an award-winning book — *On the Side of the People* in the *Great Plains Quarterly*. That's published in the United States in this instance. It featured three books from Saskatchewan that came out last year. If you're asking, did that give me some preliminary insights into comparative labour movement? On a modest level, on an introductory level. Am I an expert in the field? By no means.

And so I guess what I would return to and simply say, if there is a question, a question of relevance to this Bill, a question that doesn't contain an ad hominem implicit fallacy, then I'm delighted to take that. But if we would like to continue down this line of questioning, Mr. Chair, then I guess I will simply ask, so far what we've seen is the recycling of some questions. What we've seen — an ad hominem attack and I think hopefully a pivot point that we can move beyond.

Mr. Iwanchuk: — Thank you. Yes. Well I might take up the minister on that last point. Then in particular on Bill 6 and on the issue of certifications and on the impact of the mandatory versus card, have you yourself . . . or what research was done? I'll just read this statement, that:

> [It matters in] the manner in which unions are approved (or certified) as the collective agent for workers has an impact on their success. Requiring secret ballot votes reduces unionization success rates and certification attempts.

Would you like some clarification? I mean we're talking about using card signing versus secret ballot and what research did the department do. And I'm saying to you that it in fact reduces, voting reduces unionization, and your comments around that.

Hon. Mr. Norris: — I will come back more substantively. Again the question is a complex one, compound one. The member has turned and said, he's telling me, in fact telling the members around this table, of a phenomenon. He didn't say this is a hypothesis. He said here's what is going on; here's a phenomenon. There is no evidence that he's put on the table on this. There may be supporting evidence of this hypothesis, and I would welcome that but to turn and make a knowledge claim . . .

Well I can only refer to this, and again I will actually come back to the substance of this, but this is what I would call causal complacency. That is, here is a claim offered as a truism if you want, a nugget of knowledge standing by itself. I have no reference what the source is, no idea what evidence there may be supporting such claim or discounting such claim. And significantly, there is no framework within which to turn and say it's this one variable that leads to this one outcome.

David Hume would say there's no "necessary connection," at least as it's been presented here. On that I will refer to the counsel of my colleagues for just a moment, Mr. Chair, and maybe we can come to some point of clarification, but frankly I'm a little bit surprised at the approach.

The milieu of labour relations is rich and textured and nuanced, and any such knowledge claims would probably have to be, have to share those similar features of nuance. So if I may, Mr. Speaker, I'll be right back.

If I may I will, if I may I'll present a quote, if you will, of a bit of a hinge that will allow Mr. Carr to say a few words. The quote is from *On the Side of the People, a History of Labour in Saskatchewan.* The author is Jim Warren and Kathleen Carlisle. Quote is on page 1 of the preface. To help contextualize this, I'm happy to go into greater detail, but it is to turn and say, "Unions were founded on those principles most valued by Saskatchewan people: sharing, caring for your neighbour, equality and democracy."

It's with that reference and again I'm happy to contextualize trade unionism, another quote has been ". . . was firmly rooted in Saskatchewan well before we became a province. Unions have been a significant part of the social fabric every since."

I mean this is firmly rooted within the Saskatchewan experience, and there is specific reference to both equality and democracy. That helps to inform the forthcoming comments by Mr. Carr.

Mr. Carr: — Thank you, Minister. When developing the legislation, the consideration that we gave was how to facilitate a process that would ensure that every interested party had a vote and to ensure that in that process there were clear decisions reached as to outcome.

When you consider that proposition, we took the view, in terms of developing the legislation, that it was really focused on creating that opportunity for an individual to exercise their conscience and to make a vote following an informed appreciation for what the impact of that vote would be.

Hon. Mr. Norris: — I think what we also have is again a cross-jurisdictional comparison. Ms. Wellsch, is there a list that we can draw on to turn and say, these were, these were elements of lessons learned from other jurisdictions across Canada? Ms. Wellsch, you go ahead.

Ms. Wellsch: — We have a great number of statistics here about union coverage in Saskatchewan and across Canada that deals with general union coverage, public sector union coverage, by jurisdiction. And it does demonstrate that, in terms of overall union coverage, Saskatchewan is — this was from 2007 — Saskatchewan is at 34.8 per cent, which is higher than

the national average of 31.5 per cent, and that public sector union coverage in the same time period for Saskatchewan was 75.7 per cent, with a national average of 75.5 per cent. So Saskatchewan is just slightly above the national average in public sector coverage.

Mr. Iwanchuk: — Mr. Chair. Okay. Let me, because in some ways . . . Well I won't do a preamble. Let me tell you something else. If I was say to you that the average unionization rate for the five provinces with automatic certification is 34.7 and is above the provinces requiring a mandatory vote which is 30.5, have you ever — you personally — have you ever seen those figures?

Just if I could just add, this will be very disappointing if the two questions here that you somehow are unaware of these things.

Hon. Mr. Norris: — I appreciate the question. I will, I will respond. The question was phrased have I personally seen. I'm here in the capacity as a minister of the Crown.

I will make reference to Mackenzie King, his work in the early part of the 20th century, *Industry and Humanity*: "Many-sided comprehension is essential to any intelligent understanding of industrial relationships, however circumscribed."

I think that spirit informs the work that we have done and continue to do. The question, again a very . . . It's a complex question. These are complex questions, compounded. The nexus of the question actually attempts to identify a causal relationship, a necessary connection between one variable factor and a certain outcome.

And, Mr. Chair, I will ask Mr. Carr to offer evidence from across Canada where this notion between voting — a very democratic action — and a specific outcome as it may affect unionization. The evidence available — which I'm not certain the members around this table would have access to — but the evidence available suggests that there are likely other variables involved because, because the empirical evidence does not support the hypothesis.

And so once again we have a knowledge statement, a factoid sitting by itself, with some normative bearing, with some weight given to it. And instead of being offered as a point of reference, discussion or dialogue, it's pointed with a premise of, you should know this.

And I'm happy to tell you, the research that's been undertaken for these two Bills has been extensive. The expertise available to myself has been impressive, unflagging.

And I'll now ask Mr. Carr to offer some empirical evidence regarding those jurisdictions in Canada where we have the vote and we have some specific rates of coverage or unionization. Mr. Carr.

Mr. Carr: — Thank you, Minister. Our research was based on the 2007 Stats Canada labour force survey. We take note of the fact that there are — were at that time — five jurisdictions in which a vote was a mandatory feature of the governing legislation. Those provinces were Newfoundland and Labrador, Nova Scotia, Ontario, Alberta, and British Columbia.

British Columbia had a union coverage rate of 32.1 per cent; Alberta, 23.8 per cent; Ontario, 28.2 per cent; Nova Scotia, 29.4 per cent; and Newfoundland and Labrador, 37.7 per cent. Canada as a whole had a union coverage rate of 31.5 per cent.

So what we find is that Newfoundland and Labrador was greater than the national average. It was also greater than two neighbouring provinces, Prince Edward Island and New Brunswick, where the union coverage rate was 30 per cent and 28.2 per cent, respectively. And the fourth Maritime province, Nova Scotia, had a unionized coverage rate of 29.4 per cent, which is higher than New Brunswick and slightly lower than Prince Edward Island.

It's also worth pointing out that British Columbia, with a coverage rate of 32.1 per cent, enjoyed a rate slightly higher than the national average.

Mr. Iwanchuk: — Thank you. Mr. Chair, I find the minister's comments in terms of . . . how did he say it? It probably won't be verbatim obviously, but his comments regarding just taking somehow in isolation, and I find that, because he's quite frankly . . . I have to admit the fallacy things . . . I'm not sure what he is telling me. I'll go back and look that up. But I find the manner, that he proceeds in, condescending but anyways.

I would just like to also further read into the record then, because I think he's touched on a very important issue, and that is scientific research — scientific research — because he wanted to talk about that, so good. I'm glad you said that because that was where I was going, sir:

> Specifically, differences in laws governing how unions are certified as collective representative for workers as well as union security clauses . . . are increasingly being accepted as explanations of diverging unionization rates . . . Research indicates that requiring mandatory votes to approve a union as a representative of workers reduces unionization's success rates compared to the process wherein unions can be automatically certified through card checks (i.e., without a vote).

Going on, you mention British Columbia. Thank you very much.

> . . . experience in British Columbia between 1978 and 1998. This is an interesting period since mandatory voting was introduced in 1984 and then eliminated in 1993. It provides an opportunity to link results with the specific manner in which workers certify a union . . . found that unionization success rates fell by 19 per cent after mandatory voting was introduced and then increased by nearly the same amount when it was eliminated . . . [these] differences in certification process are directly linked to divergent in unionization rates between Canada and the United States.

Another study: ". . . Ontario's change from a card-check system to mandatory voting in 1995 . . . concluded that the 'introduction of mandatory votes had a highly significant effect on the probability of certification.'"

Further studies on certification. Laurier University findings:

> . . . particularly the importance of certification process in determining unionization rates . . . concluded that 17 to 24 percent of the difference between unionization rates between Canada and United States could be explained by a widespread use of mandatory votes in the United States, compared to the less widespread use of such votes in Canada.

Again I obviously haven't heard of these things, and this is where my disappointment comes in because obviously you're being kept in the dark.

> A previous study . . . using 19 years of data covering 9 Canadian provinces concluded that mandatory voting policies reduced certification success rates by 9 percentage points . . . specifically noted that, "the results also suggest that differences in recognition procedures between the USA and Canada and may provide potential explanation . . ."

Further findings . . . perhaps I should stop, but I realize that, you know, my knowledge of research and all that is probably limited, and I see, you know, from yours it's quite wide in approach.

But I'm wondering if the minister not only is a minister but is completely in the dark. So my question again is, have you yourself heard of these comments? Have you done research? And finally, the research that you've done was so extensive; I wonder if the minister would mind tabling that research. Would the minister mind tabling this extensive research that he's done?

Hon. Mr. Norris: — Mr. Chair, I'll ask a very simple question. Assuming that the member is reading from a specific document that probably he has not authored, I wonder if he would table that document for all committee members? That would be a place to start.

The Chair: — As I have stated in the past, it is not required for members to table documents that they have with them to pose their questions. It is certainly, if a member would like to table it, that is certainly the member's decision. Your question has been noted, and we will leave that decision to the member.

Hon. Mr. Norris: — I appreciate the opportunity to address this question. The question is very specific and with a purpose. I have been asked if I am familiar with a range of paraphrased information pieces. And the answer is, there are various elements, components, and features of being briefed and undertaking research.

So what we can say is, without reference to the document that the member is referring to, one can turn and say the research that we've offered here today — research that has been referenced and sourced — and we're even willing to share it right there as far as that comparative data because it's available to Canadians.

What we've been able to offer within this contemporary context is to turn and say, here is evidence that runs counter to that presented by the member.

For the member to posit that a minister of the Crown or officials gathered here may not be informed because they're missing a very special document — one that he has access to — is silly. It's quite silly. This would begin an opportunity, and it actually is a very healthy thing. Suddenly here is evidence, counter-evidence, debate, counter-debate. This is the purpose of why we're here today. But to come up with the slurs that were then attached to this evidence, I can only say I hope that we can return to the focus on Bill 6 and that the evidence-based dialogue continues.

My premise is that the member comes in a professional capacity, comes to roll up his sleeves, debate public policy, and that we get down to work. I don't question his competency. I don't bring up his professional background. I'm here to engage, ideally help to inform and learn from the debate. But that's not what's just happened and that's unfortunate.

Mr. Iwanchuk: — Okay, just a question and I'm not sure if the minister has heard about . . . I'll just read just a general quote on union busting:

> . . . is a practice that is undertaken by an employer or . . . agents to prevent employees from joining a labour union or to disempower, subvert, or destroy unions that already exist.

I was wondering if the minister has heard of that concept.

The Chair: — Committee members, I think this would be a good time to take a short recess. We will reconvene at 3:38. We'll take a 10-minute recess. This committee stands recessed.

[The committee recessed for a period of time.]

The Chair: — I will call the committee back to order. The next member on my speakers list is Mr. LeClerc. I'll recognize Mr. LeClerc at this time.

Mr. LeClerc: — I just want to get it on the record, Mr. Chair, as a point of debate. I think it's very inappropriate to present letters from Larry Hubich, president of the Saskatchewan Federation of Labour, when some of the letter is certainly misleading, and who has gone on long, serious rants on his blogs calling people liars, myself included, and that we're lying and we're talking about untruths and half-truths as if somehow this man is an elected official and ranks equally to the Premier of our province.

I know in this particular letter referred to by the member from the opposition, there is an extremely misleading paragraph by Mr. Hubich that, quite frankly, has accused the Premier of misleading or lying when in fact it is he who did so.

I was part of that meeting that met with the union leaders. We were asked by those union leaders to listen, to take those concerns, to present them to caucus to the Minister of Labour. And we did so, and at no time did any of us say we were unknowledgeable about the changes of the legislation. And we took that meeting forward.

I also have some point of debate in the continuing on with that with one of our deputy ministers, who's a staff person, who has validated part of that first meeting, that two meetings did . . .

[inaudible] . . . and happen, so I wish to just have it placed on the record in the *Hansard* and for the public who are looking at this, is that I think it's inappropriate and I find great fault with doing it and, quite frankly, I don't think it has a place in this committee. Unless it is a quote from our Premier that he can stand on his own or research or a quote from our Labour minister, but to take third party information and begin to question our minister on it, I think is greatly inappropriate especially when I find great fault in the person who is doing it, is filled with hubris and over the top rhetoric, and quite frankly has accused everybody in the Sask Party from being liars and talking about untruths, openly and publicly and on his blog, to present a letter from him that continues to validate the same. Thank you, Mr. Chair.

The Chair: — I would just remind the member that it is not appropriate to call someone a liar. The member may express that it is his belief that the third party was not presenting the facts as the member understood. But I would just caution all members just to be mindful of that when they are making their comments.

The next speaker that I have on my list is Ms. Morin, and I would recognize her at this time.

Ms. Morin: — Thank you, Mr. Chair. Although I'm not going to enter in debate about what the previous speaker from the government just commented on, I remind that member that blogs are purely that: they are opinions of the individuals that are blogging. And although the member might not agree with what has been blogged on this particular individual's blog site, I'm sure there are many things that I wouldn't agree to on other blog sites as well that have been blogged.

I would also like to inform the member that Mr. Hubich, who is the president of the Saskatchewan Federation of Labour, is an elected official. He is elected by approximately a membership of 100,000 workers in the province. So he is an elected official. He is entitled to freedom of speech, and so is anybody else that wants to write to the minister, whether it is positive comments or negative comments. That is what feedback is. That's what consultative process entails, is both positive and negative feedback.

And that is what Mr. Hubich has engaged in, is engaging in feedback to the minister. Whether we agree with what he has said or not, that is of no consequence. And I also remind the member that it wasn't too long ago that there was something on the Sask Party's website from a particular blogger that was since removed because of the nature of the comments. So that would be my comments to the debate that the previous member just brought up.

Mr. Minister, getting back to Bills 5 and 6, as the members will note, I've already taken the liberty of passing out a letter that I would like to refer to in the interest of (a) saving time and providing the minister a few moments to be able to read the letter and familiarize himself with the letter. The letter states that, it is in response — I'm sorry — to Mr. Gary Schoenfeldt with respect to a letter that he wrote to the Premier and was copied to Minister Norris as well.

In this letter, Minister Norris, I just want to confirm that the response letter was written April 16, 2008. And in the letter it states that the officials from the Ministry of Advanced Education, Employment and Labour have had 20 face-to-face meetings involving nearly 100 representatives of labour, employer, and other stakeholder groups. And to date, nearly 70 emails, letters, and detailed submissions have provided feedback on the Bills.

I'm assuming that since April 16 there would have been additional feedback that would have come to the minister's office. Am I correct in that assumption, Mr. Minister?

Hon. Mr. Norris: — The answer to that is, yes the feedback continues. I think it was last night — I'm starting to lose track of when we've been here — but last night we highlighted 82 submissions received regarding the essential service legislation — 55 submissions received Trade Union Act. There have been over 2,400 emails. Again some of these submissions are individuals. Some actually speak to both Bills. Some are positive. Some offer reservations about the legislation. And it's a snapshot in time as, just like the letters to the editor, just like blogs, just like news reporting. We turn and we see that there's — including in the legislature — we see that there is a steady stream of dialogue, debate, retro-flective of a robust civil society. So it's a snapshot in time and the answer is, yes we continue to receive feedback.

Ms. Morin: — Thank you, Mr. Minister. Mr. Minister, I just wanted to provide to you what I have received in my own constituency office. As the minister well knows, we have received correspondence in the minister's office as well as constituency offices. And so that the minister has the opportunity to follow along with what I'm going to be describing, I'm going to provide the minister with the documents.

And this, Mr. Minister, is a package of 2,520 emails that were sent to my office. And the entire package, Mr. Minister, is emails with people who have concerns and are asking for public consultation on Bills 5 and 6. So I can tell you, Mr. Minister, that the entire package that I've just presented to you of emails is of emails that directly have concerns for Bills 5 and 6 and are seeking a more detailed public consultation process because of that.

So that will clearly bump up the minister's numbers if the other ones are mixed with both positive comments and negative comments because unfortunately this package has grave concerns with the way Bills 5 and 6 are written and would seek further clarification and public consultation before these Bills proceed to move forward.

Mr. Minister, so I'm . . . Oh sorry. I'm wondering if I could ask a question about something that the Premier said about Bill 6 here. I'm just going to get the quote because I don't want to go off track here in terms of what the Premier actually said.

It was, on December 19, Premier Wall described, in a media scrum, the formula by which certification votes would be counted during an organizing drive. He stated that "Every worker in the workplace would count as a vote so that any workers who failed to vote during a secret ballot would be counted as a 'no' vote." Is this what the Premier said, in

essence?

Hon. Mr. Norris: — Thank you for . . . First of all, thank you very much for the letter in advance. That was very helpful. And I appreciate the list that's just been offered from your constituency. I note that it appears to be, if I just paraphrase the top, specific letter-writing campaign or a campaign of some sort.

I think significantly, for the record I just simply want it reflected that the individuals contained within this list stretch right around the world and stretch far beyond any specific jurisdiction in Canada, never mind Saskatchewan. But I see reference ranging from Australia to the United States, various countries of Europe, Malta, Malaysia, Korea — I'm assuming that's South Korea — Jamaica, Japan, New Zealand, the Netherlands. So just to again to thank you for this, but it is just to contextualize that that is part of a campaign.

The specific quote that you've asked about, I don't have that quote at present. What I'm happy to do is just to ensure for the record that the process is clear, but that may not be the nature of your question. So again I'll just, I'll stop here and take your direction as far as the nature of the question.

Ms. Morin: — Well my apologies. I would assume that the minister would be familiar with what the Premier said in scrums about labour issues. If that's not the case, that's fine. Perhaps we'll just do it this way then. Is the Premier correct in his assumption that every worker in a workplace would be counted as a vote, so that if any workers failed to vote during this secret ballot, they'd be counted as a no vote?

Hon. Mr. Norris: — For the purposes of moving forward, what we're happy to do is to offer any clarification. The key element on this feature is that this feature has not changed within the legislation. That is, if we see governance as possessing elements of both continuity and change, this is an element of continuity.

And what I'll do is I'll actually have Mr. Carr just read, I think it's, if I'm not mistaken, article 8. I'll let you just read that, and you may want to reflect on what your experience has been on a go-forward basis reflecting on your experience.

Mr. Carr: — Thank you, Minister. Article 8 of The Trade Union Act deals with the quorum for votes. And it reads as follows:

> In any such vote a majority of the employees eligible to vote shall constitute a quorum and if a majority of those eligible to vote actually vote, the majority of those voting shall determine the trade union that represents the majority of employees for the purpose of bargaining collectively.

Again in terms of my experience with the legislation, this has been the case and continues to be the case.

Ms. Morin: — So in the event of a secret ballot vote then, just so that it's clarified for those watching, the employees that go to vote during the secret ballot . . . Let's put it this way. Say there was 100 employees in a workplace and only 20 employees came out to vote, but 100 per cent of those 20 employees that voted, voted in favour of the union. Can you then explain, Mr. Minister, what would happen from that vote? Would that union be certified? Or because there was only 20 of the 100 employees that came out to vote, would that union not be certified?

Hon. Mr. Norris: — The scenario as laid out, and I appreciate the scenario, but in this scenario there would be no quorum, and so the vote wouldn't take place without quorum. So it's to turn and say again, there's a great deal of continuity. And what I'll do is I'll have Mr. Carr speak to the specifics. That is, even though we're moving to the mandatory vote, certainly he can speak to examples where there have been these votes in Saskatchewan, and there's elements of continuity.

Mr. Carr: — Thank you, Minister. Again there has been no change to section 8 of the Act, and so the board would be in a position where they would have an application pending before it. If there was not a sufficient number of employees present to establish a quorum by exercising their vote, the vote would not be considered valid, and it would have to be rescheduled.

Ms. Morin: — Thank you. So let's just say for instance that that situation repeats itself. Would that just end up being rescheduled on a constant basis, or how would this ever come to an end if you have the same 20 employees come out to vote from that group of 100 employees, given that they are 100 per cent in favour of a union?

Hon. Mr. Norris: — The question again rests on a hypothetical scenario. I'm actually going to turn this over to Mr. Carr. It is to reinforce the significance here, and that is section 8 has no amendments to it. That is, the process remains the same and, Mr. Carr, again drawing on your insights and experience you may be able to help put a little bit of flesh on this hypothetical question.

Mr. Carr: — Thank you again, Minister. The board, in terms of discharging its responsibilities to address the application, would undertake to notify individuals, the employer involved, and the trade union as to the place and date and time of the vote. They would then conduct the vote, and the vote would lead to a known result. If, in the case you're describing, a series of votes have been held, the board, I would assume, would undertake its obligation by entering into further discussions with the applicant trade union and the employer as to finding an effective way in which the vote can be conducted.

Ms. Morin: — I would assume that that would have to take place as well. Although there haven't been any amendments made to section 8, the fact that there is amendments for a mandatory vote is different, so it does change the complexity or the fabric of section 8 now.

The notion of having to potentially change how the vote's taking place is something that would likely be foreseeable because right now there is a concern that when there's a mandatory vote held . . . When certification cards are signed, they're signed with people knowing what they're signing, and they're not feeling coerced either way. They can make a decision that's free of their own conscience as to whether or not they want to sign that card to join the union. When there's a mandatory vote, they're having to show up at their workplace and cast a ballot which, depending on the flavour of the

workplace — if there's a strong sentiment for a union to come in there — the employer would likely know that those employees are going to be voting in favour of the union.

So it no longer has the flavour of secrecy, democracy, because there is a notion that the employer will then know who is voting to have a union put into that shop or that workplace and thereby prejudicing the employees and workers that are going to cast their votes, their ballots.

So I'm failing to understand how the government feels that this is going to be a more fair and democratic process when the most secret and democratic process was card certification. And having to go and physically cast your ballot in your workplace in front of your co-workers and employer, potentially, how that would make it more secretive and democratic?

Hon. Mr. Norris: — And again I appreciate the question. The scenario is premised on some assumptions and I think these are worth examining.

One assumption is that the process that relies solely on the cards reflects always the will of the individual and sometimes, certainly anecdotally throughout history, we've heard different elements of that. The second assumption is that employers somehow understand what it is that individuals are going to do on a free and secret ballot. And again I question that assumption. Another assumption is that the votes would take place within sight of the employer. So those are three key assumptions where, if we take those three — and there are some other pieces that Mr. Carr will refer to — I think what we can then turn and say is that at the very least those are contested assumptions.

This is what's called a series of if-then statements. If A leads to B, then C is an outcome. So again there's a causality here. We need to unpack these. We need to sit down and say, let's actually look at the interrelationship between these factors or variables.

The democratic process of having individuals consulting their own conscience, that is a very significant — in private, in secret — it is a very significant step forward in the democratic evolution, very, very significant. It hasn't always been the case even within the political realm. So when we turn and look at that evolution — that is, the capacity to cast a secret ballot in confidence — we're talking about a very significant element of freedom of expression.

So if we take that as a pivot, in light of the other assumptions that I call into question, then I think we turn and say, the scenario as spelled out is certainly one that puts more emphasis on the status quo than any element that we would call for. What we have called for, what we campaigned on, is the democratization of the workplace. And secret ballots are at the core of that call for democratization. I'll ask Mr. Carr to just comment more broadly on some of the features of the question.

Mr. Carr: — Thank you again, Minister. It will be up to the Labour Relations Board to determine as I mentioned earlier how, when, where, and what time a vote will be undertaken. In discharging their responsibility, they will establish, as they have now, a policy and a process around the conducting of those votes, and I'm confident that that will occur in a way that addresses the issues that have been raised.

Ms. Morin: — So how do we perceive this secret vote being taken place on an employer's work site? So if there is a perceived notion that the work site is either completely against having a union or completely pro having union, that either way . . . Let's put it this way. Generally speaking, complacency sets in, and people don't tend to go out and cast their ballot whether it's an election of any kind or a vote of any sort. So given that the minister is comparing this to that type of scenario, how do we perceive that this would end up not reflecting upon the sentiment of the workplace because that flavour is usually quite well known by the employer?

Workplaces don't tend to unionize just because. Workers don't tend to think it's a great thing to have to pay union dues for no good reason. It's usually because there isn't proper benefits being provided or proper wages being provided or if there's unfair treatment in the workplace. Those are generally the reasons why workers will seek a union. So how do we perceive these secret votes taking place in a workplace so that it can ensure the utmost privacy and democracy for those workers that are going to cast their ballot in the event that there is a strong flavour in that workplace?

Hon. Mr. Norris: — Again there are a couple of elements here. We can return to the scenario. Often workplaces are complex environments or milieus, a variety of opinions reflecting a variety of opinions within society. The opportunity for an individual to cast a ballot in secret for many unions is not an alien concept. For many unions, their leadership is selected by secret ballot. And so we see that there is precedence here, even in this very narrow band again — we'll speak more broadly about secret ballots in Canada — but even within organized labour there, in many scenarios.

An additional point is that the — we'll call it — not infrequent practice is that votes are already held in neutral locations. That doesn't happen all the time obviously. But it is to turn and say secret ballot process familiar within most unions. The milieu, the environment within which votes take place is a variable that changes. And for some additional insight, I'll ask Mr. Carr to comment.

Mr. Carr: — Thank you, Minister. It is certainly the case that most unions, by constitutional obligation, hold elections for their officers. And they do so by exercising a process, in my experience, that is a secret ballot.

Hon. Mr. Norris: — I guess I would just contextualize the mandatory vote. As we move forward with this legislation, we will be joining the ranks of British Columbia, Alberta. Saskatchewan will be included. Again we join the ranks of our colleagues in Western Canada — with the exception of Manitoba — Ontario, Nova Scotia, and Newfoundland. So this is now moving into over half of the provinces, moving in the direction of secret ballots.

Ms. Morin: — Thank you for the answer. With all due respect to your ADM [assistant deputy minister], Mr. Minister, that's a bit like comparing apples and oranges. When the workers of a union go and vote for their leadership, they all belong to the

same organization, are simply electing people who are going to be speaking on their behalf, not whether or not the entire workplace is going to become a unionized workplace or not. So I'd have to say that that wouldn't quite fit in the same category however . . .

The ability to show majority support for a union by signing application through membership cards or forms has been in place since 1945, Mr. Minister. I'm wondering if you could describe what the problem is because you've explained to my colleague here that the unionization percentages in Saskatchewan are very much in line with the national average, especially with respect to the public sector coverage, and we're slightly above the national average with respect to private sector coverage.

So I'm wondering if you can describe why — if this card certification process had been in place since 1945 — why it needs to be changed now, especially since Saskatchewan is in this amazing boom that it is, and we are a growing and vibrant economy, and everything is, you know, firing on all cylinders, why it would be now that it seems to be problematic, that we have a system that has been working for us since 1945?

Hon. Mr. Norris: — Again I appreciate the question. The question is actually broad in scope and that is, what we've seen is, within our election platform, the promise to move forward on a number of priorities. This is one of those priorities, and in fact we are moving forward on it. So it will be another example of us keeping our promises.

The fundamental principle is actually a democratic one. What we're speaking about is a democratic reform, and ideas regarding democratic reform obviously go back . . . well they go back a long way. They go back to the Greeks; they go back within a more truncated timeline to issues of the Renaissance and the Enlightenment; within the Canadian context. As I say there's been an evolution here, but it's really, it's really consistent. It's really consistent with a notion of freedom of expression.

When we see it within that context and frame it within that context, we turn and we say, this is our platform. The notion of that expression — secret ballot — that is the individual's opportunity to consult his or her conscience before casting a ballot. It is something that we've seen take root across Canada.

We will be the sixth province to have this in place. The element of the question is, if things have worked so well so far, and I think what we can turn and say is, our focus is ensuring that we sustain the growth, we share the benefits of this growth with the people of Saskatchewan, and offer lessons learned from other jurisdictions. There are some indicators, specific indicators within Saskatchewan that we can point to and turn and say that there's room for improvement within the labour relations milieu, within this environment.

So what we see — again to set the context, I'll ask Mr. Carr to comment on a couple of these indicators — but specifically we have a platform. We ran on the platform. We were given a mandate based on the platform. We're delivering on promises within the platform, 60 of which already acted upon.

We are moving forward on this platform piece because it's consistent with our commitment to democratic workplaces, again a core element of which relates to secret ballots. Our goal is to sustain this growth, to bring greater fairness and balance to our labour relations environment. And there are some indicators that in fact there is room for growth and improvement within that environment. Mr. Carr.

Mr. Carr: — Thank you, Minister. One of the issues that can be useful to all parties in terms of informing the discussion would be to look at the significant increase in the number of applications coming from individuals to the Labour Relations Board, and try and again look to what are the mechanisms that are in play.

Unions by their nature are organizations which conduct their business in a democratic process. But the issue at the end of the day tends to be where there's a concern or a disgruntled member, what happens to satisfy the concerns that they have raised?

One of the concerns that the Labour Relations Board has been dealing with for the past number of years has been an increasing number of DFR [duty of fair representation] applications. Those are applications brought by individuals alleging a failure to represent. And the focus here again would be to try and have the unions think about how they conduct their business in a way that would allow a reduction in those issues.

Now we've not dealt directly with that in the Bills, but it's simply one indicator of what happens in terms of trying to manage expectations within an organization. And it becomes useful and helpful, I think, to inform the discussions in terms of leadership and communications within the trade union movement to try and affect outcomes that are sustainable over time, where people feel they've been heard and their issues have been addressed.

Ms. Morin: — Thank you. Stemming from that answer, I'm wondering if the minister could describe for us how many DFR applications have come forward and how many of those have been successful?

Hon. Mr. Norris: — I appreciate the question. What we've seen in recent years, more than a doubling of cases between 2002-03 and '06-07. The numbers actually are larger than that. In '02-03 there were 11 applications; the next year 33; the next year 41; the next year 31; and so on.

Ms. Morin: — I'm sorry. I can't hear you. There's too much noise going on. Could you repeat that again?

Hon. Mr. Norris: — Certainly. In '02-03 there were 11.

Ms. Morin: — Thank you.

Hon. Mr. Norris: — What we've seen in '06-07, there are 24. The intervening numbers actually spike so we . . . in '03-04, 33; '04-05, 41; '05-06, 31. So we see this tremendous spike from '02-03 up considerably.

From there, and I think the significance of this — again it's meant as a snapshot in time — is that the significance is that

these applications are being made, that they are moving forward. The actual success rate we'll get to you; we'll track those numbers down. But it is to signify — and I'll actually have Mr. Carr elaborate — we've seen again from '02-03 to '06-07 more than a doubling and a spike in the intervening years.

Mr. Carr: — Thank you, Minister. My experience on the Labour Relations Board for the province of Saskatchewan would support the belief that the success rate is very low. The challenge, though, and I think the issue is simply the increase in the number of applications which suggests that people are not availing themselves of the internal processes within the trade union to resolve their concerns. And so that's the issue that I was attempting to get at.

Ms. Morin: — Thank you, Mr. Minister. It could also be that they're being encouraged to go to the Labour Relations Board rather than seek out the advice of their union, but you know what, we'll just leave that as a hypothetical scenario.

So I'm wondering if you could just explain — because I'm really trying to get the essence of this, and I'm working hard with the minister to understand this — so the minister was describing yesterday about how this was going to assist in the new West. I'm just wondering if the minister could describe how the amendments are going to make Saskatchewan more competitive for business in the new West.

Hon. Mr. Norris: — I haven't seen the transcripts — again I appreciate the question — I haven't seen the transcripts from last night. I tried to be quite balanced in my framing and phrasing. The discussion had multiple reference points. And I'll review some of those and then we'll go to a couple of new areas.

But the amendments as we focused on them, we focused on a couple last night towards the end. And the first one related to an annual report for the LRB, the Labour Relations Board. That ought to happen. This House and the people of this province ought to have access to an annual report from the Labour Relations Board. This is consistent with practices in British Columbia, in Alberta, in Manitoba.

So suddenly if we begin to reframe this one element alone . . . And we'll get to others. If we begin to reframe the annual report — that is one of the amendments we're bringing forward — we turn and we say, BC [British Columbia], Alberta, Manitoba, what's the exception right now? What's the anomaly? What's missing? Saskatchewan.

Saskatchewan ought to ensure — and what we're proposing and bringing forward is that we will ensure — that there's an annual report completed by the LRB. Thereby this isn't simply relating to serving a specific interest or element of that policy continuum. It actually is meant to serve the people of this province. That is, if they look to that horizon of significance — a term borrowed from Charles Taylor — if you look to the horizon of significance, even the most immediate horizon, the closest horizon, citizens of those jurisdictions have access to an annual report; we ought to have the same. An informed citizenry is better positioned to have informed action, debate, and dialogue, especially regarding labour relations.

If we turn and say, we should have a six-month window for the Labour Relations Board to offer a ruling, this is again meant to serve all citizens of Saskatchewan, especially in light of what has been allowed to happen within the Labour Relations Board in recent years. That is work has gone uncompleted. It's incomplete, a case going back to 2004, multiple cases 2005, multiple cases 2006, 2007.

What we heard during the consultations was that whether a Labour Relations Board agreement, or sorry, ruling was to be in one party's favour or agreement or another party's favour, mattered less than just simply providing a context within which there were timely decisions. This isn't happening now. The citizens and stakeholders of Saskatchewan should have that.

When we go to length of agreements, another one of the amendments, what we see is that there are some minimums, a one-year minimum in BC, one-year minimum in Alberta, one-year minimum in Manitoba, but only in Saskatchewan at present — and we're working to change this — a three-year maximum. Why the anomaly in Saskatchewan? Those are three very significant examples.

Another example that we spoke to at some length last night related to the threshold for vote: 45 per cent in BC; 40 per cent in Alberta; at present 25 per cent in Saskatchewan, the lowest by far in Canada — what I said last night — by a country mile; 40 per cent in Manitoba. The new Saskatchewan will take its place — 45 per cent in BC, 40 per cent in Alberta, 45 per cent in Saskatchewan, 40 per cent in Manitoba. Suddenly Saskatchewan is within a five point bandwidth of those jurisdictions in Western Canada. This is significant.

On communications: BC allows for communication. Alberta allows for communication. Manitoba allows for communication. Another one of the amendments that we're moving forward to ensure that there's open communication here, yet another indication. What we're seeing is that Saskatchewan has been an anomaly, an exception in Western Canada. And what we want to do is move from being an exception, an anomaly, a place where internal citizens and stakeholders and external stakeholders turn and ask questions like we wonder why, to turning and saying this is obviously part of playing that leadership role in Western Canada. There is a predictable, balanced, fair labour environment within Saskatchewan.

These are some of the indicators that again there may be, there may be partisan differences, but on an issue like timely decisions by the Labour Relations Board or an annual report issued by the Labour Relations Board, on those it is very difficult, I would assume, for anyone to question the significance and validity of these amendments. Those are some examples. I'm happy to get into greater detail about the Western Canadian reference point here, but it is to turn and say we're seeing Saskatchewan take its place among its peers.

Ms. Morin: — Thank you, Mr. Minister. I appreciate the minister's answer. I still find it interesting that despite the fact that Saskatchewan is this anomaly with respect to the changes that are being proposed to The Trade Union Act, that despite the fact that we are that anomaly, that we are still at an average level with the national average with respect to the percentage of

unionization in this province. So it's interesting that we are at the national average despite the fact that we are deemed to be this anomaly.

And I wouldn't imagine that Mr. Minister would want to encourage this government to simply sink to the lowest common denominator across the country just because we would be the anomaly, whether it would be this or anything else. I'm sure Mr. Minister would say, you know what, we're Saskatchewan. We're loud. We're proud. We're unique. And if we have something that's better than anybody else, that we would want to maintain that and maintain that with a sense of pride. So to simply sink to a lower denominator or to what is deemed the lowest common denominator, you know, because we're an anomaly — without any statistical information in terms of percentage of unionization — seems very peculiar.

And I wouldn't think that this would be something that would be along the lines of partisan decisions or partisan ideals given that there are so many people that are concerned with this legislation. I would say it's more to do with practical concern and practice, shall we say, that's been taking place in the province.

I'm wondering if the minister could describe why there was a decision made to give employers the right to give opinions about whether employees should support a union during an organizing drive.

Hon. Mr. Norris: — I'll come to the direct question, but in the preamble, if I understood correctly, there were a couple of elements. First of all just for the record, we've provided today material, data that we had regarding levels of unionization within Saskatchewan. So, you know, for the record there's been no gap, no knowledge gap on our side.

The next piece relates to rates of unionization. And again we've offered evidence to turn and say that the connection, let's say, between secret ballots and unionization in Canada offers a snapshot where we see, obviously, the only way to offer an interpretation would be there would be other variables in play. Then there's an underlying assumption as well about potential threats — if I've interpreted this — to unions. And if I've misinterpreted that . . .

The outcome as far as unionization in Saskatchewan, that's not one of the variables we're looking at. We're driving on the democratization of the workplace. We're driving on a more fair and balanced labour environment.

As far as the broader condition of Saskatchewan, I will simply offer a pretty significant piece of data. How do we begin to account that between 2001 and 2006, Saskatchewan experienced an out-migration of 35,000 people? Something must account for that.

And so we see a more robust environment. As I've said more recently, we've seen elements of continuity and change within Saskatchewan. This is an element of — and I've used this term before — recalibration. This is moderate, middle-of-the-road legislation. It's about rebalancing.

The notion of, in the language — if I have it correctly — sinking to . . . The new Saskatchewan prepares for and is ready to meet the oncoming challenges. And the oncoming challenges that Saskatchewan has to meet, they relate to labour market. They relate to ensuring that our rural communities have more people in them, that Saskatchewan recovers from a period of out-migration where we can sustain dynamic, cosmopolitan, diverse, inclusive communities in Saskatchewan, where we can turn and say Saskatchewan is ready to sustain the growth and ensure that the growth is shared with the people of this province.

There are obvious lessons learned from other jurisdictions, and we have within these amendments, within this Bill, delivered on our promise to help ensure greater predictability, greater balance, and a position of greater competitiveness for Saskatchewan. That's what we said we were going to do. We ran on that. We were elected on that. We're moving forward on that.

A notion of Saskatchewan sinking, that's part of a bygone era, an era that has no nostalgia attached to it. As the people of this province look to promise, they welcome their kids back, and their grandkids back. They welcome new neighbours. And there are challenges associated with growth, but those challenges of growth, those are the challenges that governments and communities and unions and businesses and churches and community-based organizations and service organizations and sports clubs, those are the challenges that we can't wait to resolve.

Well we're rolling up our sleeves and saying, these are the challenges of the new Saskatchewan. And the new Saskatchewan includes a more fair and balanced labour environment that allows Saskatchewan to be increasingly competitive within a globalized world. It's part of a bundle of promises that we've already met and that we're moving on. And the feedback we're getting is that people from right across this province don't have any appetite to go back to the time when their kids are leaving and their grandkids are leaving and their neighbours are leaving. And their property values went down and the future was uncertain. They don't want to go back to that time.

They don't want to go back to the time when a premier would talk about being a wee province, when a premier would talk about perhaps drifting in and out of equalization, when a member of this Assembly would turn and say, well if people leave the province, that means there's more for the rest of us. They don't want to go back to that time.

They want to demonstrate through their dignity and hard work that in fact, as Peter Gzowski has said, Saskatchewan, the most Canadian of provinces. A quiet pride and respect. And we see that today. And that's why we're moving forward. It's a broader vision of the good life for Saskatchewan. We promised we would, and we are moving forward.

That's why this is so significant — the debate and the discussion and the dialogue — and I appreciate the opportunity to be here because what we're talking about is not Saskatchewan sinking; we're talking about Saskatchewan rising to the challenge. That is the vision that Premier Brad Wall offers. That is the work that we have underway, and we're just

getting started.

Ms. Morin: — Thank you, Mr. Minister. So having said that, I'm wondering if the minister could explain to me how the amendment to section 11(1)(a), how does that amendment make Saskatchewan more competitive for business?

Hon. Mr. Norris: — Mr. Chair, before I respond, I will simply say that the frame of reference for the question, that is, more competitive for business, misses the broader frame within which we're speaking. That is, this is not a frame of simply serving a specific interest. This is a frame that's rooted in ideas — profound ideas. And so I don't want to leave the impression that this is simply . . . we can sit down and chisel out, here's a change reflected or reflective of a specific interest.

The interest is the interest of Saskatchewan — the interest. That is the duty of any government to govern in the interest of a province. That's the premise. The ideas are actually grounded not with notions of serving specific interest groups, but serving the people of this province.

We begin to situate and compare this . . . And I'm conscious of the time so I, with your leave, Mr. Chair, I'll just continue until you offer an alternative.

But it's to turn and say, communication's allowed. In British Columbia, a statement of facts or opinion reasonably held, consistent with our notion of responsible communication. In Alberta, employer's view allowed. In Manitoba, fact or opinion allowed. In Ontario, employer's view is allowed. In Quebec, they don't have this provision; again Quebec is an anomaly in this instance. In New Brunswick, employer's view allowed. In Nova Scotia, employer's view allowed. In PEI, employer's view allowed. Federally, employer's personal view, point of view, allowed.

So we can situate this in this very broad Canadian horizon to turn and say, here is the frame within which we're operating. We want to ensure that Saskatchewan offers responsible and respectful communication between employers and their workers.

Importantly, it will still be an unfair labour practice for the employer to interfere with, restrain, intimidate, threaten, or coerce employees by communication or other means. What we've done is we've been attentive to best practices in Canada. What we've done is said, reasonable and respectful, responsible communication is the intention and the parameters, the limits, the limits are prescribed right here within the legislation.

Again for the record, an unfair labour practice for the employer, it will remain that the employer can't interfere with, restrain, intimidate, threaten, or coerce employees by communication or any other means.

So that's in the legislation. The legislation allows us to take our position within Canada and we see that with a couple of exceptions these are best practices in Canada. The language that's been used, and perhaps this is one of the elements, this has been informed by the language used from other jurisdictions.

The Chair: — Committee members, it now being 5 o'clock, we will recess until 6 o'clock at which time we will resume with consideration of Bill 5. Ms. Morin would like to . . . I believe she has a small statement.

Ms. Morin: — I just want to say thank you to the minister and his officials for answering our questions on regarding Bill 6, and we look forward to seeing you after supper again, thank you.

[The committee recessed for a period of time.]

The Chair: — I see we have all committee members present. Before we move to the next item on our agenda, I would just inform members that we have a few substitutions for this evening. We have Mr. Reiter substituting for Ms. Eagles, and we have Ms. Ross substituting for Mr. Ottenbreit.

The next item, the final item on our agenda for today is consideration of Bill No. 5, The Public Service Essential Services Act. Minister, if you care to reintroduce your officials or if you have some new officials that you'd like to add, I'll leave that to your discretion. But, Minister Norris, you have the floor.

Bill No. 5 — The Public Service Essential Services Act

Clause 1

Hon. Mr. Norris: — Mr. Chair, thank you very much. I would like to reintroduce Wynne Young, our deputy minister; Mary Ellen Wellsch, our acting executive director, labour planning and policy; Mr. Mike Carr the associate deputy minister for labour, employee-employer services, and Pat Parenteau our senior policy analyst within the Ministry of Advanced Education, Employment and Labour. And once again I'm delighted to have the privilege of appearing before the committee.

The Chair: — Thank you, Minister. Members, I open the floor for questions. I recognize Mr. Iwanchuk.

Mr. Iwanchuk: — Thank you, Mr. Chair. Good evening. In your amendment, newer amendment on clause 19, which was amended from the original amendments, I was wondering if just with some chronological order if you could kind of take us through what the thinking was when you put in original 19 and then what the change is with the new amendments.

Hon. Mr. Norris: — Thank you for the question. The original clause 19 was drawn almost verbatim from Manitoba's legislation. The amendment as it appears really relates to the powers of the board. And what I will do is, there are three very brief elements to it and I'll just read that into the record and then we can speak in a little more detail:

"Powers of board

19(1) For the purpose of carrying out the intent of this Act, in addition to the powers conferred on it by this Act, the board has all the powers conferred on it by *The Trade Union Act*.

(2) An order made by the board pursuant to this Act or

the regulations is enforceable in the same manner as an order of the board made pursuant to *The Trade Union Act*.

(3) There is no appeal from an order or decision of the board pursuant to this Act, and the proceedings, orders and decisions of the board are not reviewable by any court of law or by any *certiorari*, mandamus, prohibition, injunction or other proceeding.

(4) The chairperson of the board may make any rules of practice and procedure that the board considers necessary to carry out its responsibilities pursuant to this Act."

The shift that is reflected in this amendment, what we've done is as we reflected on the original clause and then again as we reflected on . . . I've spoken previously about the horizontal frame of reference as we went across and examined different Canadian jurisdictional models regarding essential services, and it is important at this stage to turn and say there are but two jurisdictions — only two jurisdictions — not to have essential service legislation in Canada at this time.

So as we reviewed these pieces of legislation, the Manitoba model became of particular interest to us in large part because of the model of how over the last 12 years only three cases have gone to the Manitoba Labour Board, and so this had particular appeal. It's not the sole criterion. So our legislation is modelled largely on Manitoba.

What we were able to do here is actually further refine the legislation. And the legislative model for the amendments actually resides within Saskatchewan, and the model here relates to The Health Labour Relations Reorganization Act from the mid-1990s. So what this was, was an opportunity to refine this clause. It had been almost verbatim based on Manitoba. This amendment reflects what we may call made-in-Saskatchewan intent and crafting, and that's the primary purpose — or rationale perhaps is a better word — primary rationale for this proposed amendment.

Mr. Iwanchuk: — In 2(c) where it outlines "**'essential services'** means . . ." and lists the four things that it does mean, if I could just . . . Maybe we could walk through this. In terms of this Act, is there under any circumstances that a union could challenge anything under 2(c)?

When I say that, what I'm trying to get at is, we have 2(c). If the employer was to designate some classification that to you and I would be obvious shouldn't be essential, but they still designate it that, is there any right for the union to appeal that decision?

Hon. Mr. Norris: — Thank you for the question. The four criteria, and again for the record I'll actually make reference to them, and then we can make some further details. This is 2:

"(c) **'essential services'** means:

(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 damage; 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."

So there's an overview. What we're dealing with here are four key criteria that really help to frame this legislation. The question relates to a dynamic that would evolve. That is what we've seen, is the intent written in within the legislation 90 days out. There's a threshold. The intention is that ideally the bargaining unit and the employer have had the opportunity . . . that is, the purpose of this legislation have been enabled to ensure that they have an essential services agreement in place.

There's a second threshold that if that hasn't been able to be worked through, there's a 30-day threshold. That 30-day threshold is a threshold where the bargaining unit can request the employer's list. The intention here, one of the features of this legislation is that the agreements themselves are to be negotiated between the bargaining unit and the employer.

The element on this piece . . . and that is, there is not unilateral action to be taken from the employer. The list is shared. Again ideally, negotiations and agreement. And the contextual frame for this, if we look at Manitoba, is that only three instances in the last 12 years have afforded the opportunity where the parties haven't actually come to their own agreement and have gone to Manitoba's labour board. So overwhelmingly what's happened in Manitoba . . . and again it's been of particular interest to us (a) sharing a sense of place that Saskatchewan has, and also as we looked at the strength of the legislation.

What we see here as well as obviously being maintained in place by various parties within the Manitoba context, what we see here is not unilateral action. What we see is the employer providing the list, the list then being reviewed by the bargaining unit. Ideally again there's an opportunity for negotiations to resolve that. There's then a two-week frame, a two-week frame for the Labour Relations Board to make a ruling, all of this well in advance of any potential labour disruption.

The goal — to ensure a degree of predictability, to ensure that the right to strike which remains — is balanced with public safety. So there's the frame within which we're addressing this question.

The bargaining unit, if not satisfied with the list, then can take the issue to the Labour Relations Board. Your question, as I've understood it, relates to a specific classification or category.

Again drawing on a Manitoba model, the answer is de facto yes. This is the classification under consideration by the LRB, and I wouldn't, I wouldn't speak to the Saskatchewan context. But what we have seen from the Manitoba context and what has been informative and instructive for us is to turn and say . . . and this is a case. The Middlechurch Home of Winnipeg and this was CUPE local 3644. The date, if I have this correct, is 1998. And the experience in this case was that the Manitoba Labour Board offered a ruling that provided zero for specific categories.

So the essence of this is there wasn't an agreement. The appeal went to the Manitoba Labour Board, and the labour board then made a determination of numbers, which is the reference in our legislation, again informed by Manitoba. But in referencing the numbers, the Manitoba Labour Board came up with the reference of, on two categories, zero.

So in effect, and we looked at this quite closely, in effect the number zero, while making reference to a number, also counts toward a category.

Mr. Iwanchuk: — At what point would you be able to go just after, when there's 30 days left, or would you be able to go to the board in that 60-day period, the 90?

Hon. Mr. Norris: — I certainly appreciate the question. And what I'll do is I'll ask Ms. Wellsch to draw upon her experience and expertise when it comes to provisions of the law and actually just walk us through the scenario.

Ms. Wellsch: — Thank you, Minister. Under section 9 of the Bill, the right to go to the Labour Relations Board arises when there's no agreement, when there's no essential services agreement and following under section 9(1), if there's a work stoppage or a potential work stoppage. So of course at any time that there's a work stoppage the employer provides the list and the right to go to the Labour Relations Board arises.

But the question is, what qualifies as a potential work stoppage? And I imagine the Labour Relations Board will be the one to rule on that. I would think that until the collective bargaining agreement has expired, it would not be likely that they would say there's a potential work stoppage because work stoppages are not permitted under The Trade Union Act until after the collective bargaining agreement has expired.

Mr. Iwanchuk: — So in terms of collective bargaining that would occur in that 90, 30-day period, is there any possibility — collective bargaining being as what it is — for unfair labour practices being filed?

Hon. Mr. Norris: — Yes. The straightforward answer is of course.

Mr. Iwanchuk: — Give me an example of what might be an unfair labour practice.

Hon. Mr. Norris: — I'll have Mr. Carr speak in a little more detail. While again not exhaustive or exclusive, examples would certainly converge around failure to bargain in good faith. And as I say, drawing on his experience and insight, I'll ask Mr. Carr to comment further.

Mr. Carr: — Thank you, Minister. Certainly in looking at the provisions, both in the Bill and in The Trade Union Act, there's a great deal of opportunity for a union to bring application if they feel that the employer has not engaged them in free and fair collective bargaining, they have not demonstrated good faith in the position they've taken, or they've refused in fact to meet to bargain.

The onus is certainly clearly stated in the Bill that the employer has an obligation to bargain with the union for an essential services agreement. It's also worth pointing out that with respect to the House amendment on clause 19, that the remedial authority that the Labour Relations Board enjoys is significant and would be quite effective in terms of applying and ordering a remedy that would correct any situation where there was a failure to bargain or a failure to bargain in good faith.

Mr. Iwanchuk: — So you could file an unfair labour practice under a failure to bargain in good faith, but you could not file anything if you simply disagreed on a classification. You have to wait then until the 30-day period of time where there's a final list, and it's after the 30 days within the end of the collective agreement that you can go to the board.

Hon. Mr. Norris: — The question again is premised on, if we've understood it correctly, days leading up to or weeks leading up to that 30-day threshold to that. That is, there could be a different application, but the reference could still go to the LRB. And I'll get Mary Ellen as well to speak to this, but there is remedy there. The threshold simply provides if you'd like the mechanism through which to go to the LRB, but access to the LRB is available just through different application prior to that 30-day threshold.

Ms. Wellsch: — You're correct that if the only application to the Labour Relations Board you're talking about is an application to reduce the numbers on the employer's list. That has to wait until after the employer has produced this list within the 30 days, and there is a potential work stoppage. The other option's to go to the Labour Relations Board. If in that intervening time there's a complete impasse reached between the union and the employer, there may well be an unfair labour practice application on the basis of the refusal to bargain in good faith. And if that is taken to the board and if the board finds that it's well founded, there are a variety of things that the board can order as a remedy to resolve the unfair labour practice.

Mr. Iwanchuk: — I guess just so that I can understand it. So you have the 90, 30 days, if you can file an unfair labour practice in there, if there was something, not bargaining in good faith. It's only after the 30 days, though, that you can go in terms of reducing the numbers. You have to have past the 30 days, and there has to be a list. And I suppose, are there any other access times to the board that you see? Could you for example, could you say that we have come to an impasse and go to the board on day 45 to argue classifications? Can the parties come to an impasse and deem that it is necessary to go to the board? Or is the 30 day the only time you go to the board?

Hon. Mr. Norris: — Given the technical nature of the question, I'll defer again to Ms. Wellsch.

Ms. Wellsch: — Thank you, Minister. Again the only opportunity listed in this Bill for a union to take the issue of numbers to the Labour Relations Board is under section 10, and that is, "If the trade union believes that the essential services can be maintained using fewer employees than the number set out in the notice pursuant to section 9 . . ."

Now if we backtrack to section 9, this is when the employer provides its final list of the services that are essential and the employees that are necessary to deliver them. And that occurs when there is a work stoppage or a potential work stoppage. And so that is the only opportunity under section 10 to challenge the number before the board is following the delivery of the employer's list under section 9.

Mr. Iwanchuk: — I was wondering if I might have . . . Mr. Carr had, and through the minister, but Mr. Carr had talked about section 19, and I didn't quite get the relationship there. It's just . . .

Hon. Mr. Norris: — The amendment in section 19 is simply a reiteration of the authority of the board, and it's meant simply to reiterate that the authority as it resides in this Act is consistent with and reflective of the authority within the broader trade union Act. And again this was premised upon The Health Labour Relations Reorganization Act from the mid-1990s.

Mr. Iwanchuk: — Okay in terms of people looking at this and in the drafting of this legislation and the two weeks now when the board has to hear an application and get the turnaround, because we're now . . . Probably in most cases the agreement has expired. There is discussion in the Bill of 14 days.

In some of the bargaining units where there are potentially hundreds of classifications, what has been the thinking in terms of — and I recognize in the Act that it says the board may extend — but strikes being what they may, sometimes people are impatient and not willing to wait. So what discussions have you had in those kind of instances? What is the thinking that might occur, for example, if you have a bargaining unit that goes out before the board can rule? Or simultaneously, they are before the board and they're striking? Or can they be striking in fact? Are they allowed to strike at the end of the contract expiring? Or are they prevented from striking because they have an application before the board?

Hon. Mr. Norris: — Thank you for your questions. There were three or four, and we'll take a few minutes to just address these.

Thank you for your patience. Again we'll contextualize the forthcoming remarks by offering insights from Manitoba. The Manitoba experience has been very instructive. That is, over the last 12 years only three cases have had to be settled by the Manitoba Labour Board, and those three cases were very early on in the process. So what's happened is the parties have understood their obligation, and they've come to this agreement.

Again the purpose of the legislation is to provide an enabling environment that reinforces that both parties must come together and work through an agreement. That's the contextual piece that we find great optimism in.

To your specific question regarding the right to strike — it goes to that — the answer is yes; that right remains. The obligation is that the bargaining unit needs to provide the essential services. So the right . . . and that's really, that's this balance that exists within the legislation. The right to strike remains. Essential services are to be provided. Those essential services, again, we're going to make sure highways are cleared. We're going to make sure kids have access to health care. We're going to make sure that people that need cancer care and chemotherapy have access. The key here is there isn't unilateral action. There's an opportunity for the employer to have a list, the bargaining unit to get a hold of that list. If it can't be worked out, then to take that challenge to the LRB. The right to strike remains, but the bargaining unit must provide for essential services.

I'll then ask Mr. Carr and Ms. Wellsch to elaborate on those points.

Mr. Carr: — Thank you, Minister. Again what's contemplated under the Bill is that the parties will become aware of their obligations to sit down and discuss essential services with a view to reaching an essential services agreement long before there's a potential for a dispute. They'll do that as a precursor to collective bargaining over terms and conditions of employment. They'll do so in a way that requires the exchange of good faith and the opportunity to reach an agreement.

If they fail to reach that agreement, then we are exactly in the situation that you've described where an application may be brought before the LRB to challenge the list that the employer has provided. That can occur at 30 days. There's then a requirement for the board to hold a hearing and provide an answer within 14 days that would instruct the parties moving forward. If in the meantime the collective agreement has expired and the union in exercising the rights of its members has taken a strike vote and the decision has been made to exercise that right to strike, they will provide the appropriate notice of that and the strike will commence.

The provision of essential services, in accordance with the list, must occur. If that list is subsequently altered, it will be altered either as a result of collective bargaining or as a result of an order of the Labour Relations Board following a hearing.

Ms. Wellsch: — I don't think I have anything to add.

Hon. Mr. Norris: — Thank you.

Mr. Iwanchuk: — So under those circumstances we could have, we could have because the only . . . if all you can do is reduce numbers in the scenario, just that we're sort of discussing, you would not have the opportunity to challenge numbers. I mean you could find yourself in a situation of being unable to challenge those numbers. It is sort of like you either go on strike with the last list of the employer or you negotiate.

Hon. Mr. Norris: — I think it's helpful here to offer a corrective. That is, within that 30-day window, again even prior to any labour disruption and even in the midst of a disruption, the bargaining unit can challenge that list. So we're not dealing . . . This is a significant element of this Bill. We are not dealing with unilateral action. The reference to the LRB is in place, and so the bargaining unit can go and obviously take that challenge

to the LRB.

Mr. Iwanchuk: — I guess what I'm seeing . . . and if you just bear with me, I mean, but I think for purposes of discussion and seeing the various scenarios . . . Because I think what I see is that the employer is having the ability to prevent a strike and that being this. If you bargained to the 30 days and you had not . . . Because the employer has said everybody is essential, said everybody is essential, the union at 30 days has to make an application to the Labour Relations Board. If that is not dealt with in the 30 days, everybody is essential. Who goes on strike?

Hon. Mr. Norris: — Thank you for the question. There are a couple of elements and we'll just reflect on how best to express these.

For clarification again, this goes back to a key element, and that is the right to strike. The scenario as it's been laid out . . . and again this legislation guarantees that right to strike. Prior to the 30-day threshold or after the 30-day threshold there is obvious recourse available based on a lack of bargaining in good faith. That remains an option. So in the scenario provided where — again dealing with hypothetical 100 per cent of the employees were deemed to be essential — an argument would be made by the party to turn and challenge that notion of bargaining in good faith.

After 30 days, once past that 30-day threshold, still out in front of any potential labour disruption, so we are now in a time frame where the bargaining unit cannot only still go back to the LRB regarding bargaining in good faith or unfair labour practices but can also then turn, and within that 30-day window still out in advance of any labour disruption go the LRB with a challenge to the list. The significance of the Manitoba ruling that we've just made mention of and the cases . . . and here we are specific reference to the case. That is the Middlechurch case of 1998. What we saw was — and this is very instructive and it again it informed our thinking around this in part obviously within broader comparisons. But that is, the ruling wasn't simply one that affected numbers. That is the number zero had the de facto result of actually affecting classifications.

So again what we see is prior to 30 days, application based on unfair labour practice is available, this is within this scenario you've painted. After 30 days that application, still available, but also the application to actually challenge the list. The challenge to the list referenced within our legislation to the numbers; but the numbers, what we've seen from the Manitoba case, is in fact that when the number is zero it has the affect of affecting a classification or category.

So we see one application prior to the 30-day threshold. We see both applications available after the 30-day threshold, still out in front of any potential labour dispute. This is part of the significance of this Bill. That is, the right to strike remains. What is also significant is the negotiation component. This is one of the elements that's consistent with many other jurisdictions in Canada. That is, the negotiation is to occur in good faith between the respective parties. The thresholds simply outline some of the potential applications. So the element here is actually relating to predictability, which stands in stark contrast to where Saskatchewan has been in the past.

I've made reference previously to the recent CUPE strike in late 2007 where issues of essential services spilled out into the public and into the media, only after the labour disruption began. What this is meant to do is ensure the framework's in place. The parties will negotiate in good faith. The right to strike remains. The focus is narrow, and the parties are meant to negotiate. This draws heavily on the Manitoba model; the Manitoba model has been very instructive for us.

I'll just ask if my colleagues might have any elements to add.

Mr. Iwanchuk: — Question wasn't answered, Mr. Chair. That wasn't my question. I understand what you're saying about zero and Middlechurch. I understand that. What I'm proposing to you . . . We have large bargaining units, and I don't think this is so much theoretical as possible, is that even within the 30 days . . . What I'm saying to you is that there's a potential that this might get to the board but not be resolved at the end of the collective agreement.

What you have now created is you have now, with what you've got set out, prevented the bargaining unit from striking. Obviously if you, you know, where there's a relationship and these things are worked out, fine; we're not talking about those. But obviously if the parties are going on strike, then there's probably somewhat not the healthiest of relationships.

So the potential there is greater that that's where you're going to get applications before the board simply because the parties are at odds with each other. You're now at the bargaining table where you have not been able to achieve anything, and now you're asking the parties to get together and talk about essential services. It wouldn't be that odd that they might not reach an essential service agreement based on collective bargaining.

If you do not and if you cannot guarantee the parties that they will get an order back from the board — because the board can extend, and if it can't do the 14 days, it has the right to extend — are you not at the end of the collective agreement because if the employer has a list that says everybody's essential and is that designation at the end that you go out . . . You have a choice whether you go out on strike or not. But virtually there would be no choice because everybody would be essential, unless of course you're willing to walk out and face the fines.

Hon. Mr. Norris: — We'll have a few stages here to the response. The significance is that again the bargaining in good faith is one of the premises. That is, the bargaining unit, if it saw an employer not doing so, can make application to the LRB, and it doesn't need to wait for that 30-day threshold.

The element here is to actually have the essential service piece resolved prior to the dispute. That's the significance. Certainly the Manitoba model, again, very illustrative of the capacity for that to happen, 12 years, three cases settled by the Manitoba Labour Board — that is, there has been a change of culture in Manitoba. There is a willingness to actually reach agreement.

The capacity or processing of the LRB, which I think may go to an element of your question . . . That is, how does the LRB actually potentially handle or address complex cases within a narrow time frame? And Mr. Carr will speak to that. And as offering some additional empirical evidence, again drawing on

the Manitoba model, we'll have Ms. Wellsch make reference to that when Mr. Carr is finished. So, Mr. Carr.

Mr. Carr: — Thank you, Minister. It's contemplated that the Labour Relations Board, upon receiving an application, will conduct a hearing as soon as possible. At that hearing, the parties will bring forward evidence that will inform the board's decision as to the efficacy and probity of the list. In that circumstance, the evidence brought by the union and brought by the employer will receive full consideration, and it will result in a timely decision by the board because the simple fact is that within the Labour Relations Board, as this Bill becomes operational as legislation, they are going to have to develop policies and practices that return a decision within 14 days. There is an opportunity under the Bill for an extension if it should be required, but again it's highly unlikely, as the board develops its expertise in administering the legislation, that that will be a problem moving forward.

Hon. Mr. Norris: — Ms. Wellsch, you can speak to the Manitoba case.

Ms. Wellsch: — In the three cases from Manitoba, in each one the Manitoba Labour Board cites the progress of the proceedings and when the application was made and what the parties did in the meantime and when the hearing was finally determined and when the ruling was made. And I think the best example is the third one which is SEIU [Service Employees International Union] against St. Adolphe nursing home company limited where the application was filed on March 15, 1999, and the decision was rendered on March 29, 1999. The other two, there were some procedural issues in between that the parties were working out before the hearing actually took place and the board rendered its decision. The Middlechurch one was the longest one. The hearing concluded on May 23 and the decision was rendered on July 2.

Mr. Iwanchuk: — I think the last is my point exactly. If the contract expired in between there, then you've got a problem about going on strike.

Hon. Mr. Norris: — We'll go back to again this hypothetical scenario of a request for an employer as far as 100 per cent of the employees being deemed essential and Mr. Carr will speak to, based on his professional experience and insight, as far as what would happen under such a hypothetical scenario.

Mr. Carr: — Thank you, Minister. My view of the circumstances described would be that the union will have an effective remedy by bringing an unfair labour practice application, alleging that the employer has failed to bargain in good faith. That will then create the requirement for the employer to answer that application and to bring evidence forward that would substantiate its position.

If it was unable to do that, it would certainly in my mind give credence to the union's application, and the board would likely render a decision supporting the application and ordering a remedy on the part of the employer. In terms of the likely remedy, it would likely be a position that would reinstate the requirement for the employer to produce a realistic list of essential services, and in the production of that list would also probably empower the union to exercise any strike opportunity that presented itself.

Mr. Iwanchuk: — Can you strike if there's an application pending before the board?

Hon. Mr. Norris: — The answer here is under the essential service Act, that that right remains. You can undertake both steps at once.

Mr. Iwanchuk: — So that would mean at the end, if you were before the board, if you have an application before the board, the contract expires, you could serve strike notice at the end of the contract expiring, and that would have no impact.

Hon. Mr. Norris: — The only proviso here is the provision of essential services.

Mr. Iwanchuk: — It would still be under the employer's last list, whatever that may be.

Hon. Mr. Norris: — The last list would be the list in effect. The LRB would make a ruling. And the question is, if I've understood correctly, and that is regarding that right to strike, and both can co-exist under the essential service Act.

Mr. Iwanchuk: — I think we've come along now. Now I can ask, the question is then: two days after the collective agreement has expired, the bargaining unit could have the right to strike? Okay I see some nodding of heads, but I wonder, if I could hear some sound over there that would be good.

Hon. Mr. Norris: — As long as the provision of appropriate notice is given, then there's a right to strike.

Mr. Iwanchuk: — Mr. Minister, that's what I was . . . my initial question was that. I believe, and let me ask this then because I think it would create environments inside which collective bargaining occurs. And we have different — if you could call them — environments or models across the country where collective bargaining occurs. It occurs in some cases under no-strike models, other jurisdictions. So when we create these environments, we have to be sensitive to allowing collective bargaining in a sense of that being able to occur — the right to strike, whether that's clear or not, whether people should have that.

I think two points here. One is that potentially if the 14 days hit in such a manner that the union has to put its case together as well. We can't assume that this is all just going to work like clockwork. If there are any delays, for one reason or another, and the application doesn't fall before the board until the end of the 30 days, and then the union serves strike notice, and the issue is actually that there is a 100 per cent essential services list because obviously the parties have not been able to agree. And I raise this this way because 96 per cent — we've talked about this — of contracts are settled. So when we deal with these 4 per cent, or 3, 5 per cent of them, but that's where the animosity is. So where there's animosity, there's not this getting collective agreements.

So those are where we are going to find ourselves. So if the applications don't come before the board because it's a large bargaining unit and it takes some time to have a look at the

arguments that will have to be made, we could find ourselves in a situation where, if there was 100 per cent essential services required, that in fact you could serve strike notice, but nobody could go on strike because you'd still be before the board working all this out. That really was my question in designing this model, that there is potential for this to occur. I understand what has happened in Manitoba, and I understand you can build that in the culture changes, but cultures being what they are, there are always exceptions. And in the law, exceptions are usually what we end up dealing with, whether it's Supreme Court cases or whatever, but that's what we deal with. So that was really my question.

Hon. Mr. Norris: — I'll address the specific scenario, again hypothetical scenario, that is, in all of our research we have not found a case where 100 per cent of employees have been deemed essential. So it's to begin to put some bounds on the hypothetical case. It's then to turn and say that the unfair labour practice piece is available pre-30 days and post 30-day threshold. And it would be peculiar if a bargaining unit, faced with a challenge of again this hypothetical of 100 per cent of the employees, would then not challenge, take that challenge to the LRB on behalf of its membership.

The element here though . . . and this is about, as you say, those fractured cases where there are strained relations. And that is, where there are strained relations, the mechanism is in place, but importantly the spirit of the legislation is the right to strike remains but public safety is provided.

If a relationship has been allowed to deteriorate, the people of Saskatchewan are not going to be left on the sidelines without access to health care, without access to chemotherapy, without access to having and being assured that their highways are going to be plowed. The parties will come to an agreement ideally by themselves, through the LRB process. The application can go through unfair labour practice challenges after the 30-day threshold or upon the 30-day threshold through the essential service legislation.

And again based on our research, any notion of 100 per cent of employees doesn't have an empirical reference for us. And further, the steps, the application to the LRB available at any point relates to unfair labour practice. So the scenario is painted . . . While I appreciate the nuance, what happens when there are difficult relationships, the red flag in the scenario is the 100 per cent designation without application to the LRB. That's the piece that certainly restricts the relevance of the scenario that's been laid out.

Mr. Iwanchuk: — I want to read you something out of The Trade Union Act:

> (2) It shall be an unfair labour practice for any employee, trade union or any other person:
>
> > (b) to commence to take part in or persuade an employee to take part in a strike while an application is pending before the board or any matter is pending before a board of conciliation or special mediator appointed under this Act.

Could you tell me — because you have said that you can strike while there is something pending — which part in the essential services Act overrules 11(2)(b) in The Trade Union Act?

Hon. Mr. Norris: — I want to be, Mr. Chair, I want to be clear. And I believe I was very specific in my reference and enunciation that is the reference I made was under the authority of the essential service Act. The question that's been placed relates to the authority of The Trade Union Act. And we'll have Ms. Wellsch respond to that.

Ms. Wellsch: — I think any court that was trying to rationalize the two provisions, certainly the essential services Act completely allows for there to be a strike, and for an application to be made to the Labour Relations Board, while that strike is going on. And any court . . . [inaudible] . . . or Labour Relations Board interpreting trying to rationale those two sections would say that the essential services Act, it prevails in that situation.

Mr. Iwanchuk: — Well I do have more questions, but I think I'll sort of pass now and thank you very much for your answers.

The Chair: — I recognize Ms. Morin.

Ms. Morin: — Thank you, Mr. Chair. Good evening again, Mr. Minister, and your officials as well. As you can appreciate, Mr. Minister, we've been sitting here together for many hours, you and I consistently for many hours, so I'm wondering if we could just maybe do a bit of an over cap because, no, *Hansard* isn't available from everything, and just to get a few things straight in my own mind, and then hopefully we can come back with some clearer thoughts the next time we sit, and go further. So forgive me if some of these questions are redundant, but I'm just, like I said, trying to do a bit of an over cap.

So I just want to . . . Well I'll start off with, can an employer designate every employee as essential? They're just going to be simple questions, so we can just . . .

Hon. Mr. Norris: — I'll just begin my remarks by reiterating that the right to strike is embedded within this legislation. That based on the research that we've done, we have found no empirical reference to all employees being deemed essential, and most importantly the designation is to be negotiated between employer and bargaining unit.

Ms. Morin: — But there could be a scenario, a situation where an employer could designate, might designate 100 per cent, every employee as being an essential component. Is that correct? Because that seems . . . That's what I'm saying. That's why I'm doing this recap. I just want to make sure that everything is understood to its fullest degree. So I just want to understand that there is a possibility, as far out as it may seem, but there is a possibility that an employer can designate every employee as essential. Is that correct?

Hon. Mr. Norris: — Well the question is premised on unilateral action by the employer. And this is where the bargaining unit has reference and recourse to challenge that. In all of our research, we have no reference for 100 per cent. So as we turn and focus, that's where the right to strike remains. This is where the negotiation between the bargaining unit and the employer comes into focus. And so this scenario, again hypothetical, would be unrealistic.

Ms. Morin: — Can a union apply to the LRB the number of employees in a particular classification?

Hon. Mr. Norris: — What was your question again?

Ms. Morin: — Can a union apply to the . . . to Labour Relations Board, sorry I shouldn't have used that.

Hon. Mr. Norris: — Yes, no that's okay.

Ms. Morin: — Can a union apply to Labour Relations Board the number of particular employees in a classification?

Hon. Mr. Norris: — If I may, I'll read for the record, 10(1) and (2) subtitle:

> **Trade union may apply to Labour Relations Board re numbers of employees**

So it is, to address the question:

> 10(1) If the trade union believes that the essential services can be maintained using fewer employees than the number set out in a notice pursuant to section 9, the trade union may apply to the board for an order to vary the number of essential services employees in each classification who must work during the work stoppage to maintain essential services.
>
> (2) If a trade union applies to the board pursuant to subsection (1), the trade union shall serve a written copy of the application . . . [to] the . . . employer.

Just to reinforce indeed, I mean, yes, the numbers goes back to our earlier conversations regarding numbers and the de facto classifications or categories.

Ms. Morin: — Thank you, Mr. Minister. Can a union appeal to the Labour Relations Board which classifications should be deemed essential?

Hon. Mr. Norris: — Again, informed by — and we looked at this quite extensively — based on and informed by Manitoba cases, what we see is actually a convergence in and around the term numbers. And what we've seen in Manitoba is the de facto ruling on classifications through the ruling of numbers. And that is the assignment of a zero within a specific classification or category has the same effect of ruling on that category or classification. And so the answer, the de jure answer is on numbers, the de facto answer is by dealing with numbers there's also the notion of addressing classifications or categories.

Ms. Morin: — I just learned something. Can a union appeal to the Labour Relations Board which classifications meet the definition of essential services under section 2?

Hon. Mr. Norris: — That is reference to clause 2, without again prejudging any of the work of the LRB, is to turn and say we envision — again based on the Manitoba model — that that would be mindful of clause 10. And that is again the situation of addressing numbers and classifications or categories.

Ms. Morin: — So in essence the answer would then be no because of 10(1). Is that correct?

Hon. Mr. Norris: — Again drawing on the Manitoba model, what we see is rulings that can be made . . . again it's to draw the distinction between de jure and de facto. The de jure ruling would focus on numbers as written within clause 10. The de facto consequence, again referenced to Manitoba, is that the number zero has in effect the de facto result of making a ruling on a classification or category.

Ms. Morin: — You lost me.

Hon. Mr. Norris: — I'll turn, if I may, to someone with a greater depth of knowledge in this area, and perhaps at this time of the evening, considerably more eloquence.

Ms. Wellsch: — When the union makes an application to the board under The Public Service Essential Services Act, it makes the application within the terms of section 10, which only allows it to apply for a review of the numbers of employees that are required to deliver the essential service.

Now there was a different case out of Manitoba — there have only been three, but it's a different one than the one we were speaking about — and it is the case UFCW Local 832 against St. Boniface General Hospital. The Labour Board there said specifically:

> The Manitoba Labour Board does not have the jurisdiction under the provisions of The Essential Services Act to declare the essential services determined by the employer to be non-essential. The Manitoba Labour Board's jurisdiction is restricted to its ability to confirm or vary the numbers of employees.

That being said, in a different case they varied the numbers of employees down to zero in particular classifications.

Ms. Morin: — Thank you for that answer. And I apologize to the minister for not understanding what he was implying; it is getting late apparently.

So if a work place doesn't have classification, does the employer have to establish a classification system?

Hon. Mr. Norris: — I'll turn this over to Mr. Carr; he's quite concise in his deliberation.

Mr. Carr: — Thank you, Minister. I must say that in my 30 years of labour relations practice, I've never come across a collective bargaining agreement that didn't, as one of its primary functions, set forth a classification to which could be attached a rate of pay. And so it would be, in my mind, highly unusual to have a collective bargaining agreement in existence that didn't go to that effort.

Ms. Morin: — Okay. Well let's pretend there was a situation. What would then occur? I mean, clearly there, I mean, there could be a situation where that might be the case. Say for instance, if it's someone who's deemed to be an essential service — that we're not even contemplating at this point — that is going to be deemed an essential service by the minister because he does have, the minister does have the right to

appoint.

Like I said, if you could just explain what would happen if there were no classifications, whether or not the employer would then have to establish a classification system.

Hon. Mr. Norris: — Yes, but I will offer that, within the legislation, the minister has no such authority to designate. This is meant to be negotiated between the parties. The recourse is not to the minister; the recourse is to the Labour Relations Board. So, I just want to reinforce that point.

And I'll again send it back for review and update from Mr. Carr.

Mr. Carr: — Thank you, Minister. Again the example proposed contemplates a situation where an individual is deemed to be an essential service, presumably in a situation where that person is a member of a bargaining unit represented by a trade union and employed by an employer who is a public employer or an employer providing a public service that is referenced in regulation or in the Act outright.

It becomes very difficult for me to contemplate any situation where an individual is being paid, where there wouldn't in effect be a statement of what that individual does in the way of providing services for that pay, and so there would be some method that that employer would use to classify and to pay that individual. So I just can't contemplate a situation where there would be no classification when it came to determining whether the service provided was essential and therefore allow that employer to produce a list that would meet the requirements of the legislation.

Ms. Morin: — I guess I'm going to look for a little clarification then on the issue of not being able to appeal classifications. So if one can't appeal classifications, but as the minister's official has cited that it could happen through, for instance, the Manitoba case, that it would simply be allotted as a zero classification. Why would we leave it as de jure rather than making it de facto, and have it written as a statute?

Hon. Mr. Norris: — Again we go back to the significance of the Manitoba legislation and the Manitoba experience, over the last 12 years, and that is the Manitoba legislation is premised on numbers. We looked at this, we looked at this quite extensively. And based on that, the previous 12 years in Manitoba, where there've only been three cases that have had to be resolved or been settled by their labour board and in light of the research that we did, where the classification indeed . . . the question came up quite early. And the decision that was made in this case of zero, we turned and said this is instructive to us. The question arose quickly within the Manitoba context. We see it resolved quite quickly and concisely based on that number that is zero. And if you want, the premise of the de jure ruling has the effect, the de facto effect of actually ruling on classifications and categories. And so the distinction between the two is, in many ways, obviously one informed by law, but it has the exact same effect.

And so here's an effective instrument to help insure public safety and security. It provided a model for us as we move forward on the legislation. The reference in Manitoba relates to numbers. Ours relates to numbers. Manitoba came to this through some of the cases that went to the Manitoba Labour Board, and the ruling of zero offered clarification for all the parties, and most especially it provided for essential services. That is, essential services were in place for the people of that province just as the goal of our legislation is to ensure that essential services are in place for the people of Saskatchewan.

Ms. Morin: — Mr. Minister, since this is something that the minister has said that was looked at earlier on in the process, I guess in order to make things clearer . . . I mean I'm someone who used to be involved in collective bargaining, so I understand about having to go back and clean up collective agreements every so often to firm up language and other nuances. So why would you not then make a simple amendment to the Act to firm that up?

I'm just looking at the Act right now. And if you simply inserted after the words "for an order" the words simply "determining which classifications are essential services," and you know, so that you can have that instrument in there instead of leaving it in as it is now, which is as you said, there . . . I mean as the minister said, there was a concern there initially. So why not firm that up by simply adding those few words in to firm that up then, if that was the original intention?

Hon. Mr. Norris: — The response on this is again based on the Manitoba model. This is effective for both parties as it's written and so there is a focal point. That focal point relates to the numbers. Those numbers can be challenged through the LRB, and obviously an option available to the LRB would be to offer within any specific category. And in fact we saw this in Manitoba, where a number was offered from the LRB, and that number was zero. So there would be a redundancy to actually make this amendment.

The effectiveness for both parties is already guaranteed within the category or within the focal point of numbers. So it's already effective. We've seen it played out within Manitoba, and as a result turn and say, any proposed amendment would offer simply a redundancy for what's already in place.

Ms. Morin: — Okay but in the same token, Mr. Minister, the Manitoba case is not binding precedent on Saskatchewan, so that's why I'm saying, if that concern was already addressed when the ministry was first looking at this, why would we leave it de jure, leave it up to the courts to decide instead of actually putting, you know, a few words in that particular clause which would firm it up and make it clear as to what the actual intent is?

Hon. Mr. Norris: — Well I think the legislation as it's written offers a very concise, clear pivot, and that pivot relates to numbers. And you know, the deliberations, the very solid questions tonight offer very clear reference as far as the options available to our LRB. So this is concise. It's clearly articulated. As I say, there's a notion of redundancy; that is, it's in place. We see how it works and operates within the Manitoba context, both within the legislation and also within subsequent cases. And we've seen the outcome. That's been very clear.

Ms. Morin: — So from my experience with case law through arbitrations and things and such, it's clear that the courts tend to

look at intent. So if the legislation currently states what it does, it would thereby carry the intent that classifications should not be therefore be argued, appealed, and would then perhaps look at a zero allotment to a classification as not having jurisdiction perhaps.

Hon. Mr. Norris: — The point here — and we may ultimately agree to simply disagree — but the point here for us is to turn and say this focal point on the numbers has the effect of actually being able to shape categories. But I will ask Mr. Carr to have a few comments.

Mr. Carr: — Thank you, Minister. Really the issue here is what's the opportunity for remedy if in fact an application comes before the Labour Relations Board, and the Labour Relations Board enjoys very broad powers to effect a remedy in situations where an application is brought before them. And it's really on the basis of those broad powers, wisely and judiciously applied, that one would find the opportunity for there to be some comfort moving forward as decisions are rendered by the board.

I think it's also worth noting that in the area of judicial review, which in effect is an application from a decision of the Labour Relations Board to the Court of Queen's Bench, those applications are occasionally brought, but it's also clear on the face of the record that it's very uncommon for judicial reviews to be successful. In other words, the authority of the Labour Relations Board to render a jurisdictional issue and render a decision is virtually unchallenged.

Ms. Morin: — So wouldn't that make my point all the much stronger though? Because if someone did want to take something forward to a judicial review and the intent is not clearly stated that it — because it's not de facto — it would then be, it would then render a zero application as not having jurisdiction.

So that's exactly my concern, is if it goes forward to a judicial review, that they would look to the intent of the Act. And given that the language is not de facto, it would then not feel that it has the jurisdiction to — as Mr. Carr has already pointed out — rule otherwise.

Hon. Mr. Norris: — The element from our side is the relevance of the research that we've done, obviously. And here's a prairie province right next door, Manitoba. They've come forward 12 years. Only three cases have had to be settled by their labour board.

We drew on some of the best practices from across Canada. We found this compelling. That is the pivot or the focal point of numbers. We drilled down into specific cases, said indeed numbers within the Manitoba context have had effects on classifications. That is the number zero.

Well I wouldn't want to presume whether it would be the LRB or the courts, that they would somehow confine their research, their own investigations. That's something that they would undertake. Obviously within Canadian legal history there are many instances where officials of the judiciary have gone back into hearings exactly like this and gone through transcripts and gone through — and obviously the public record stands.

The intent is clear. This is meant to be fair and balanced legislation. It's meant to help balance the right to strike with public safety. The transcripts will show that we've focused on this issue of numbers, and they will also show that obviously the consideration that's been taken here is that reference has been made to a nearby jurisdiction where the number zero has been used, thereby having a very clear, concise clause that is focused on numbers and with the implication being that numbers, obviously a number zero would affect the classification.

And again the broader goal here is just to have concisely written, effective clause. We have that, and it's demonstrated through the case studies provided by Manitoba.

Ms. Morin: — Thank you, Mr. Minister. I'm very relieved that the minister's intent is that it should be something that should be able to be appealed to Labour Relations Board in terms of classifications as well. I'm pleased that the minister has that intent.

But what I'm concerned about is that by leaving this doubt and this loophole there to be argued in the courts, again it would provide a comfort level to those who could possibly be affected by this legislation if that language was firmed up and, and you know, the words would be put in, like I said, after "for an order," the words, "determining which classifications are essential services." If those words were put in there, in that clause, clause 10 . . . I'm losing it now, 10 — what is it? — 10(1) yes, 10(1). It's getting late. Anyways it would just firm up the intent that the minister has and thereby not leave it to the courts to have, you know, to be argued. So I'm just wondering, you know, why the minister wouldn't consider putting forward an amendment. I mean there's other amendments, House amendments that have come forward already as well. Consider putting forward a House amendment to firm up that language, so that that confusion or that anxiety would then be taken away.

Hon. Mr. Norris: — From where we sit that the focal point on numbers actually offers great clarity. It offers very, very significant clarity regarding, regarding this. And that is, the reference to numbers offers the LRB an opportunity to contemplate any range of numbers. And this is quite concise. It's written clearly. It's drafted clearly, and the intention is that by focusing on the numbers actually, those that would be making decisions actually have a very clear focal point upon which to make their decision. So we're satisfied, both from the experience in Manitoba and obviously that we've incorporated this into our legislation, that the reference to numbers is more than sufficient to actually meet the concerns of those who may question this.

Ms. Morin: — Thank you, Mr. Minister, and officials. I am through with my questions. Not really, but I'm going to have to be through unfortunately because the hour is late. My colleague has one more, and I thank you for your co-operation.

The Chair: — Mr. Iwanchuk, you have one more question.

Mr. Iwanchuk: — Yes.

The Chair: — Okay go ahead.

Mr. Iwanchuk: — Thank you very much. Just in terms . . . and this is just sort of a completion of the . . . we talked about the unfair labour practices. Do the unfair labour practices . . . I mean obviously would be filed under The Trade Union Act. Then is there not different timelines there?

Hon. Mr. Norris: — Okay thank you. If I may, I think we would phrase that again in the light of a hypothetical scenario. The Trade Union Act would establish parameters but in no way would those parameters determine the imperative or the schedule within which the LRB would actually get down to work in such a scenario.

The Chair: — Members of the committee, we have reached our agreed upon time. I will allow a comment from a member with regards to thanking the officials. Also I see the minister would like to make a small comment. So at this time, I will recognize the minister.

Hon. Mr. Norris: — Again we the elected officials, we relish the opportunity to debate and dialogue and welcome it most at any time of the day. But it's only through the very hard work, the diligence, and commitment of officials within our public service that this is possible. And I would just invite the members of this committee to join me in paying special thanks to all the public officials that have helped us proceed to the point where we are this evening.

Some Hon. Members: — Hear, hear!

The Chair: — I recognize Ms. Morin.

Ms. Morin: — The opposition would also like to thank the minister and the officials for being co-operative and working with us these many late hours so that we can better understand the legislation. So thank you.

The Chair: — Committee members, before I ask for a member to move a motion of adjournment, I would just also like to thank all members for the work that we did this afternoon and this evening. Members were respectful of one another. I think we have made considerable progress, and I thank all members for co-operating and making the job of the Chair quite pleasant and fairly easy this afternoon and this evening. And as I said, I would like to thank you all, and I believe Mr. LeClerc had indicated that he would move a motion of adjournment.

Mr. LeClerc: — I move a motion.

The Chair: — It's so been moved. Are members in agreement? That has been carried. This committee now stands adjourned.

[The committee adjourned at 20:03.]