Alberta Federation of Labour

Essential Services Submission

November 6, 2015

As an organization representing 170,000 unionized workers, in both the private sector and the public sector, and as advocates for all working Albertans, the Alberta Federation of Labour has an important role in the modernization of Alberta's labour laws. For more than 100 years, the AFL has been at the forefront of a fight for safer, fairer and better workplaces and a healthier and more equal society for all Albertans. As part of this fight, the AFL has led legal challenges and lobbied governments in order to establish, protect and uphold the rights of working Albertans and to improve our province's laws.

An especially egregious shortcoming in Alberta's legislation which must be rectified is the blanket ban on the right to strike for all public-sector employees.

As a result of recent court decisions, Alberta has an exciting opportunity to institute an effective and respectful new essential services model which can set the course for more positive labour relations and more efficient and fruitful collective bargaining negotiations into the future.

In January 2015, the Supreme Court of Canada (the "SCC") unequivocally recognized and affirmed that the right to strike is a fundamental component of collective bargaining and therefore protected under the *Canadian Charter of Rights and Freedoms* (the "Charter") in its decision in *Saskatchewan Federation of Labour vs Saskatchewan* ("SFL"). These rights to collective bargaining and striking are integral to the functioning of a labour relations regime in a democratic and fair society and are therefore constitutionally enshrined. The AFL was proud to be granted intervener status in the SFL case and was pleased to serve its role as an advocate for fair and functional labour laws that respect the rights of workers and unions. In striking down Saskatchewan legislation that severely restricted the right of the public sector to strike, the Court raised questions about the validity of laws of other provinces, including Alberta's.

Furthermore, Alberta courts have ruled that sections of the current *Alberta Labour Relations Code* (the "Code") and the *Public Service Employee Relations Act* ("PSERA") violate the right to freedom of association protected under the Charter as they impede or interfere with a meaningful process of collective bargaining. The effect of these rulings is that Alberta must bring its laws into constitutional compliance by March 31, 2016. However, the changes required to give full effect to collective bargaining rights and freedom of association are significant and necessitate more substantial amendments to Alberta's labour laws.

The AFL is thankful for this opportunity to provide our thoughts and to participate in the formulation of a new and effective regime for essential services which protects public safety while respecting the constitutional rights of workers and unions.

The new legislation must shift Alberta's approach from blanket bans on sectors, units or classifications to a functional understanding of essential services requiring only the performance of specific duties, at specific levels of service, which prevent danger to the life, health or safety of the whole or part of the population. At no point should determinations on essential services be made unilaterally by an employer or

government and the presumption should be that no worker is essential. The overall regime should not interfere with the rights of the parties' to freely engage in collective bargaining and should interfere as little as possible with the rights of unions and workers.

For ease of reference, we have attempted to organize our submission in line with the discussion document provided. However, please note that discussion around the application of PSERA is moved to the beginning of the document.

In summary, the AFL recommends:

a) The elimination of PSERA and the consolidation of all Alberta labour laws under the Code, with one comprehensive definition of "employees" which excludes only those performing managerial functions or those employed in a confidential capacity with regard to labour relations.
b) The presumption in legislation that all employees have the right to strike and no employees are essential.
c) A definition of "essential services" should be included in the legislation. It should be clear, simple and comprehensive, but not overbroad. The international standard of "services needed to prevent a clear and imminent threat to life, personal safety or health of the whole or part of the population" is preferred.
d) Essential services agreements should be negotiated between the employer and union. They should be focused on maintaining only levels and types of service which are necessary to protect essential services – not to maintain full operational capacity – and they should list duties required, not employees, classifications or units. Replacement workers should not be allowed to perform essential duties and only management personnel who were already employed at that facility prior to collective bargaining should be able to do this work.
e) The deadline for concluding an essential services agreement should be tied to the collective bargaining cycle and should allow sufficient proximity to bargaining that the essential services agreement is fresh and relevant. We recommends a six-month period prior to expiry of existing collective agreements and one-month periods for new agreements.
f) The negotiation of essential services agreements should be set to firm timelines to ensure there are no impasses. Mediation and third-party resolution should be available when parties cannot agree, although also subject to strict timelines so that neither party can slow the process for tactical gain.
g) Essential services agreements should be open to amendment on an ongoing basis by negotiation between the parties to ensure they remain reflective of circumstances. Parties should also have the ability to terminate these agreements with sufficient time before collective bargaining.
h) Essential service agreements should not extend beyond the life of a collective agreement unless there are adequate opportunities for both parties to re-negotiate throughout the process via amendment or termination clauses.
i) The AFL recommends that that Labour Relations Board be the adjudicative body for matters pertaining to essential services agreements. However, the AFL recommends additional resources be provided to the Board for these functions. The Board should be the repository for essential services agreements; there should be no obligation to file them elsewhere.
j) Mandatory compulsory arbitration has no place in a functional essential services model where parties negotiate amongst themselves and resort to strike procedures (including associated resolution mechanisms) when necessary. However, the AFL acknowledges that, in rare cases, all or substantially all of a bargaining unit may be "essential" and therefore barred from striking such that the right to strike does not carry its full economic effect. In these rare cases, a third-party dispute resolution mechanism for the collective agreement is warranted.

Essential Services Models

An appropriate essential services model must balance respect for the rights of the workplace parties with ensuring that public safety is maintained. It must also be responsive and flexible enough to facilitate the ultimate objective, which is the mutual conclusion of a collective agreement.

Currently in Canada, there are two main essential services models. In one, an essential services agreement is negotiated between the employer and union at the time of collective bargaining. Typically, these are open to amendment on an ongoing basis so that they do not become obsolete. In the other model, no formal agreement is entered into between the parties. Instead, at the time that a work stoppage is contemplated or ongoing, an agreement or declaration is made delineating which services are essential and how they will be maintained. The important element in both models is the right for public-sector unions and their members to strike, and that employers and governments are not able to unilaterally dictate the terms of essential services arrangements. In Alberta, the broader public sector has been completely prohibited from striking so there is no history of addressing essential services in Alberta at all.

In the SFL decision, the SCC recognized that the right to collectively withdraw labour is a fundamental component to the right to collectively bargain and pursue workplace goals – which in turn is a fundamental component of the right to freedom of association protected by s. 2(d) of the Charter. As stated by the Chief Justice:

> The right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right. It seems to me to be the time to give this conclusion constitutional benediction. This applies, too, to public sector employees. Those public sector employees who provide essential services undoubtedly have unique functions which may argue for a less disruptive mechanism when collective bargaining reaches an impasse, but they do not argue for no mechanism at all.

Given power imbalances between employers and unions, the right to strike is often the only effective means for workers to give full effect to their collective bargaining rights. The United Nations Committee on Freedom of Association has ruled that "the right to strike [is] one of the essential means through which workers and their organizations may promote and defend their economic and social interests," and that, without the right to strike, "bargaining risks being inconsequential – a dead letter."

Mandatory interest arbitration is a poor substitute for the right to strike and the Court noted this in the SFL decision, as it reduces the effectiveness of collective bargaining over time and does not respect the fundamental associative nature of bargaining and strikes.

Furthermore, the rights to strike and to lock out can actually reduce labour strife and the possibility of protracted disputes. When both parties know that they must approach the negotiation table in good faith and be ready to find an agreement, because they cannot expect an interest arbitrator to do it for them if they cannot, they are more likely to do so efficiently. The right to strike levels the playing field somewhat by allowing unions and employees to exert one of the only pressures they have in a dispute: the economic power of withholding labour.

The Court recognized that, in the case of the public sector, some limits on the right to strike must be set out in order to protect essential services, which are not generally provided to the public in the private sector. However, the Court was very clear that these limits must be narrow and that many public services

may not be "essential" and further, that the levels of service which are necessary to protect the public interest may be lower than those provided in day-to-day operations.

The Court quoted Justice Dickson's dissent in the *Alberta Reference* "… that an essential service be one the interruption of which would threaten serious harm to the general public or to a part of the population… I find the decisions of the Freedom of Association Committee of the ILO to be helpful and persuasive. These decisions have consistently defined an essential service as a service 'whose interruption would endanger the life, personal safety or health of the whole or part of the population'."

Again, the Court cites previous decisions and International Labour Organization ("ILO") rulings that limitations must be based on the life, personal safety or health of a population or part thereof. Mere inconvenience to the public does not amount to an essential service.

The Current Labour Law Landscape

Inclusions, Exclusions, PSERA and Compulsory Arbitration

As a preliminary matter, the AFL recommends the streamlining and harmonization of Alberta's various labour laws. Currently, multiple statutes interact to create a confusing, redundant and sometimes contradictory web of labour rights and obligations. Splitting off sectors – for example, through PSERA, which affects not only direct employees of the government but also employees of various government sponsored entities – introduces more discord into labour relations and further diminishes the rights of labour.

The ultimate goal should be the elimination of PSERA and the inclusion of all employees under the Code. In this manner, the essential services regime will be clearly delineated and understood under the Code. However, if there is great resistance to simply eliminating PSERA all together, there could be a multi-step approach of amendments. In that, unfortunate, alternative, initial modifications should be made to harmonizing and consolidating the definition of "employee" across PSERA sections 12 and 13 and the corresponding section 1(l) in the Code. The majority of other provinces have a single, common definition of "employee" in all relevant statutes, which is comprehensive, but balanced. In addition, the confusing and redundant lists of inclusions and exclusions to the definition must be eliminated so that all appropriate employees have access to labour rights. Most provinces exclude only those performing managerial functions or those employed in a confidential capacity with regard to labour relations.
As such, the AFL recommends the immediate consolidation of the existing parallel labour law schemes, but if there is reluctance to moving that quickly, then a phased in approach should begin with a consistent, comprehensive and fair definition of the employees to whom these rights apply.

Furthermore, all employees must have the right to strike subject to limitations that may result from the essential services regime. The practical effect of that regime may be that some employees or bargaining units are prevented from striking because their roles have been deemed essential at a level of service that is so high as to realistically require little or no reduction in service. Nevertheless, it is in accordance with the Supreme Court's findings that the right to strike is a fundamental component of collective bargaining and the right to freedom of association that all the right to strike is nominally available to all, though regulated through employer negotiations in accordance with essential services legislation.

Therefore, the basic elements of an essential services regime must be the presumption that all employees have the right to strike, that limitations to that right are minimally impairing only so far as necessary to

protect the life, health and safety of the public and that any and all determinations on setting those limitations must not be unilaterally decreed by employer or government, but rather involve a negotiation process with resort to third-party assistance only in cases of unacceptable impasse.

The existing model of compulsory arbitration in place of the right to strike must be replaced under a unified essential services model as it subverts the ability of both parties to negotiate freely with minimal interference or impairment. In the SFL decision, the Court commented on the deficiencies of mandatory arbitration as a substitute for the right to strike. Furthermore, mandatory arbitration does not serve the underlying principles of the right to strike and the right to freely associate, which is the reduction in power imbalance between the employer and unions. Employers have vastly more resources and information than unions and therefore hold much greater power in a mandatory third-party process. The only time mandatory interest arbitration will be acceptable is if a unit does not have access to the right to strike because enough of a unit's employees are essential that the right does not have full effect.

In the impugned Saskatchewan legislation, a particular problem was the breadth of essential services that the employer could designate unilaterally without an independent review process – and the absence of an effective alternative dispute resolution mechanism. However, as noted above, alternative mechanisms may be legitimate, but they must be very limited in use, so that the majority of employees are not designated as so essential that they may not strike. The ultimate test for all labour relations legislation, then, is whether the statute or provision amounts to substantial interference with collective bargaining. Any limitations must be minimally impairing.

Defining Essential Services

Even with a consistent legislative scheme for labour relations in Alberta, there remains a need to delineate the boundaries of application of an essential services regime. Not all unionized employees or bargaining units need to be included – allowing those that clearly fall outside these boundaries to pursue their own dispute resolution mechanisms more quickly.

Most jurisdictions – in Canada and abroad – draw the boundaries by including in legislation a definition of "essential services". The International Labour Organization provides a broad definition of services needed to prevent a "clear and imminent threat to the life, personal safety or health of the whole or the part of the population." Most Canadian jurisdictions have adopted fairly similar language. A definition should provide clarity and guidance, but allow the parties enough flexibility to make their own determination, in their own particular circumstances, in order to give effect to their collective bargaining rights and to encourage efficient negotiations.

An example of a definition that is comprehensive and functional is that included in Section 30 of the *Ontario Crown Employees Collective Bargaining Act*:

> "essential services" means services that are necessary to enable the 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 the administration of the courts or of legislative drafting;

The *Manitoba Essential Services (Health Care) Act* contains a similar definition:

> a service, duty or function that is necessary to enable an employer to prevent or limit

(a) loss of life;
(b) serious harm or damage to, or deterioration of, the mental or physical health of one or more persons; or
(c) serious harm or damage to, or deterioration of, property required in the performance of an essential service. (« service essentiel »)

The definition must not be overbroad as to include factors that are not appropriate for an essential services determination. The definition in British Columbia includes danger to the "welfare" of the residents of British Columbia, which has been interpreted by the courts as including economic interests of third parties.

Given the underlying nature of the right to collectively bargain and the right to strike, recognized by many courts and affirmed by the Supreme Court of Canada in the SFL decision, is the right of both parties to exert economic pressure to conclude an agreement, the inclusion of a term like "welfare" would create further disputes and set a poor foundation for improved legislation and improved labour relations. It should be noted that the inclusion of the term "welfare" has not been considered in a Charter challenge and we submit that it would not be upheld were one to occur.

We note with interest that new legislation introduced in Saskatchewan contains no definition or guidance on the notion of "essential" services. The determination is therefore left entirely to the employers and unions to negotiate, with the potential for arbitrators or government to assist in those determinations in cases of dispute. This legislative choice does provide flexibility to parties to set boundaries appropriate to the unit or sector in question. However, some guidance provides an element of predictability, reduces uncertainty and help the parties to focus on the issues that are in contention in bargaining and in ensuring adequate essential services are maintained, rather than many other extraneous factors, which better serves the underlying goal of a labour relations regime of concluding collective agreements as efficiently and quickly as possible.

A definition is therefore more appropriately limited if formulated as similar to an amalgam of those quoted above as set out in the Ontario Crown and Manitoba healthcare bargaining legislation. The advantage of the Manitoba definition is that it appropriately limits property damage to that "required in the performance of an essential service", which provides a limit that the Ontario legislation does not and protects the core aims and basis of the right to strike. It also incorporates the important concept that the goal of an essential services definition or regime is not to keep operations running as per normal during a dispute, but rather to maintain the level of service necessary to protect the life, safety and health of the public and to ensure the maintenance of equipment only as required for that basic purpose.

The AFL recommends that the definition of essential services be clear and easy to understand, simply those services required to protect the life, safety and health of the public or a substantial portion thereof. However, if there is to be an inclusion of the protection of environment, equipment or property, then the AFL recommends that the definition also include the appropriate limitation of relating those elements only to what is required to maintain essential services for the protection of public health, life and safety.

The more expansive the definition of essential services, the greater the erosion of the constitutional rights of unions and workers. The fewer workers who are permitted to participate in a strike or lock-out, the more the balance of economic power remains tipped toward the employer and, therefore, the less effective strike action will be. Therefore, the AFL recommends that if administration of justice is to be included in the definition of essential services, the same limitations discussed above be made clear in the definition. Any services included in the definition must be restricted only to those that provide the conditions necessary to protect the health, life and safety of the public.

As such, the AFL recommends an expansive and flexible definition be stipulated in the legislation, as a means of balancing the advantages and disadvantages of the above approaches. The AFL recommends a definition based in principle on the internationally agreed upon definition, and that approved by the Supreme Court in the SFL decision, that an essential service is one necessary to prevent a clear and imminent threat to life, personal safety or health of the whole or part of the population. In no case would it be appropriate for a definition to enumerate a list of professions or jobs or for an employer or government to unilaterally designate certain units or employees as essential.

Contents of an Essential Services Agreement

Whether the essential services agreement is negotiated at the time of collective bargaining or whether the parties only enter essential services negotiations when a dispute is imminent or ongoing, it is useful to all parties for the legislation to include some guidance or framework as to the required elements of an essential services agreement. Stipulating in legislation the broad factors that must be decided upon and included in an agreement helps the parties focus on the crucial elements required to fulfill essential duties while also reducing uncertainty or numerous extraneous factors that might slow or impede the process or increased discord and hostility between the parties.

In Ontario, strikes and lockouts are prohibited until an essential services agreement is in place. These agreements are negotiated at the time of the collective agreement. The Act sets out the order in which the agreement must be negotiated (section 34 of the *Crown Employees Bargaining Act*):

1. The types of services are essential services.
2. The levels of the types of essential services are necessary to prevent danger to life, health or safety (or other elements that may be included in a definition of essential services as appropriate).
3. The employee positions which are necessary to enable the employer to provide the types of essential services at the necessary levels.
4. The number of employees in the bargaining unit, in employee positions referred to in paragraph 3, are necessary to enable the employer to provide the essential services at the necessary levels.
5. Which employees will be required during a strike or lock-out to work to the extent necessary to enable the employer to provide the essential services.

In this framework, it must also be clear that only certain duties might be essential – not particular employees, classifications, jobs or units. Essential duties might be a small portion or all of an employee's normal duties. Therefore, the key item for the parties to define is the essential duties or functions.

Once this is decided, then the parties may be able to analyze the remaining factors in the framework to determine how to maintain those essential functions at essential levels. Again, the level to be maintained is not the normal course of business, but rather the level required to ensure that essential duties can be carried out.

An additional consideration in this regard is that the legislation should make clear who may perform part of all these essential duties and how. It is not appropriate to allow replacement workers to perform essential services as this runs directly counter to the basis of the right to strike being a small lever available to employees to even out the imbalance of economic and social power of the employer. Similarly, the extent to which management can perform the work should be limited to management personnel who were already employed at that facility or department prior to the commencement of collective bargaining.

Process for Establishing an Essential Services Agreement

Of the two most common models in Canada, there are advantages to the model in place in Ontario and Manitoba, particularly in the context of jurisdictions where negotiating relationships may be less developed. The Ontario and Manitoba model contemplates an agreement being made at the time of bargaining, with the option of ongoing amendment to ensure it continues to reflect the changing circumstances throughout the life cycle of the collective agreement. The British Columbia model offers more flexibility to the parties, however, this also brings with it more uncertainty and the potential for delays. It also relies much more heavily on the decision making of the Board.

The AFL recommends that the parties negotiate an essential services agreement amongst themselves but strongly disagrees that in any model any party should unilaterally set these terms, subject to challenge by other parties. A basic tenet of our labour relations scheme and one underlying the right to strike is the leveling of the playing field between employees and employers. The best way to reflect this goal and protect it in essential services legislation is to ensure the fullest amount of negotiation possible, and then a neutral third-party adjudication available to solve disputes.

Timelines

Since another goal of the labour relations regime is to encourage the efficient and quick conclusion of collective agreements, it is also advantageous to include appropriate timelines to guide the negotiations of essential services agreements.

The first part of the timeline to be considered is at what point essential services agreements must be negotiated. By pinning these timelines to certain stages of the collective bargaining cycle, legislation can ensure that they are finalized and in place at the time when they are needed most – which is to say when a dispute arises during negotiation of a collective agreement. As such, numerous provinces peg the timelines in relation to when notice to bargain is given or when the pre-existing collective agreement is within a set time period before expiry.

In Manitoba, negotiations must begin for any parties to a collective agreement without an essential services agreement immediately if there are less than 12 months remaining on a collective agreement or, if the collective agreement is for less than 13 months, within three months of entering into the agreement or 30 days of the Act coming into force. In Ontario, the Crown bargaining legislation requires that an essential services agreement be negotiated within 15 days of giving notice to bargain or at least 180 days prior to the end of a collective agreement if they have one.

There is also a practical side to the timeline question. In Alberta, mature bargaining relationships exist regarding most of the affected public sector and these parties have not had to address essential services in the past. All parties will need to address the significant impact that adoption and continuation of this legislation will have on their internal resources. There is a reasonable concern that if timelines are not set, the negotiation of essential services agreements will drag out and effectively eliminate any ability to consider a strike. The actions and resource decisions of the parties must not be allowed to practically eliminate constitutional rights.

The AFL recommends that Alberta's legislation also stipulates a window for the conclusion of an essential services agreement that is far enough in advance of the negotiations for the collective agreement so that the former does not delay the latter. However, the AFL also recommends that an essential services

agreement be decided upon at a time where it is still relevant and applicable to the circumstances at hand. In this respect, the AFL suggests that a six month period prior to the expiry of an existing collective agreement or a one month period for new agreements.

Dispute Resolution Mechanisms for the Negotiation of Essential Services Agreements

The other timeline that should be protected in legislation is the negotiations of the essential services agreement. This timeline should prevent negotiations from dragging on too long or resulting in an impasse.This can be achieved by a number of mechanisms, including legislated timelines and options or requirements for mediation, arbitration or board orders.

In Ontario, parties can seek the appointment of a conciliation officer by the Minister or, failing that, apply to the Board for a determination of any unresolved issues. In Manitoba, parties may request that the Minister provides a mediator or conciliation officer. Failing mediation, either party can apply for arbitration, which occurs with or without a hearing at the arbitrator's discretion. Where there is a dispute under the agreement it can be referred to arbitration and must be resolved within 48 hours. An important component of Manitoba's legislation is that mediation or arbitration remains discretionary between the parties. This better protects the requirement, as outlined in SFL, that neither party nor outside parties should be able to interfere with labour negotiations or impose terms in ordinary circumstances.

The AFL recommends that the essential services legislation contain a balance that encourages the workplace parties to bargain their essential services agreement mutually but that provides expedited and effective resolution of disputes, both on interim issues and if need be, the final content of the essential services agreement. The parties should be able to bring quick applications to get orders regarding production of records or other procedural impediments to moving forward, as well as resolution of discrete issues which have brought a halt to their bargaining so that they can return to negotiations on the remaining matters. Tribunal-imposed essential services agreements should be a last resort but, in the event that step is necessary, the stipulated process must be expedited and timely so as not to delay collective bargaining or the possibility of a strike.

The AFL recommends that the Alberta Labour Relations Board be the adjudicative body charged with addressing all essential services litigation. It has the expertise, experience and procedural infrastructure to address these cases expeditiously with a full slate of administrative law remedies, as well as case management and the ability to compel the production of documents. However, the AFL points out that the Board will require additional resources and staff to do so effectively.

The AFL recommends including timelines for each of these stages in the legislation to prevent delays and to assist the parties in coming to mutually agreeable terms without inordinate discord. The practical result if mediation fails is that the parties will need to resort to the Board for dispute resolution. While mediation is potentially valuable in better representing the wishes of the parties in a less contentious and resource-intensive forum, it also gives rise to the possibility of further delaying the process. For example, in B.C., a mediator must report within 15 days and the Board must make an essential services order within 30 days of hearing the matter. The AFL recommends similar timelines in Alberta, with modifications as necessary in relation to differing structures and processes of essential services agreements.

Health and safety during a strike or lockout

The AFL wishes to ensure that attention is also drawn to the situation during a strike or lock-out, where an essential services agreement requires some small complement of employees to be working. There are many

concerns that arise in this situation and an effective mechanism for expedited resolution of such matters should be addressed. There is the possibility that the essential services agreement turns out to provide for too few, too many or the wrong employees to be working. In addition to the impact on the life, safety and health of the population that may have, it may also impact urgently on the safety of the workers who are working.

The AFL strongly urges the inclusion of mandatory rights to the union to regularly inspect such workplaces, and the ability to bring expedited applications for resolution to either the Labour Relations Board or an expedited arbitration process that has been agreed upon by the parties in the essential services agreement. This same process should also be made available for disputes under the collective agreement and the essential services agreement regarding ongoing terms and conditions for those working employees.

Continuation, Termination and Amendment of Essential Services Agreements

The needs of the public are ever changing, as are the needs and duties of the public service and the myriad factors that influence a collective agreement negotiation. As such, essential services legislation must ensure that there are provisions to allow changes to essential services agreements that keep them responsive to their circumstances.

In Ontario, the parties may terminate the agreement if at least six months remain in the collective agreement. They may also apply to the Board to amend the agreement under the following legislated circumstances: (a) if the agreement does not provide for services that are essential services; (b) if it provides for levels of service that are greater or less than required to provide the essential services; or (c) if it provides for too many or too few employees in the bargaining unit to provide the essential services.

In Manitoba, the agreement continues between the parties until it is terminated. Either party may terminate the agreement if at least 12 months remain before their collective agreement expires; or within 30 days after entering into a collective agreement, if that agreement has a term of less than 13 months.

The AFL recommends that there be no stipulated conditions for a party to seek an amendment to an essential services agreement. The elements that are required to be negotiated in the formulation of such an agreement already contemplate consideration of the appropriate levels of services and how they must be provided. If the parties are aware that the current agreement does not reflect that reality, they should be able to seek amendments that relate specifically to the agreements shortcomings. It is redundant to include requirements to seek amendments and only invites the possibility of misuse of that section. Furthermore, amendments should be possible at any time, including during strike or lockout, with the assistance of the Board where necessary. If the goal of labour relations regimes is to quickly conclude agreements and end disagreements, then the ability of an essential services agreement to change over the course of a work stoppage is important to pressure the parties toward agreement.

In addition, for ease and efficiency, the presumption should be that essential services agreements continue during the life cycle of the collective agreement. With the option to seek amendments, and with the opportunity to negotiate again in advance of collective bargaining, the ability of the parties to make necessary changes to the agreements is built into the scheme. Keeping the essential services agreement in place by operation of law reduces uncertainty or unnecessary negotiations and delays. However, if the model chosen does not allow for either party to request negotiations for amendment or termination, essential services agreements should not extend beyond the life of a collective agreement, meaning that they should not "roll over", but be re-negotiated.

Finally, the AFL points to legislation in other jurisdictions to support the right for either party to terminate these agreements if they so choose within a time period that is safely well ahead of collective bargaining. In some cases, circumstances may change such that the existing agreement does not reflect the realities of the bargaining unit's work or their role in the provision of public services. It is, however, crucial that essential services agreements be finalized and in place within a set time period before collective bargaining as discussed above.

Conclusion

The Alberta Federation of Labour is pleased to provide this submission to the Government of Alberta and is looking forward to a new and respectful approach to addressing necessary changes to institute a functional essential services regime that is constitutionally compliant. A new government presents an exciting opportunity to renew and reform Alberta's labour laws in order to establish a more respectful and productive labour relations regime and one that upholds and protects the constitutional rights of all Albertans.