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Occupational Health and Safety Review Corporate Services Division
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Regarding the Review of the Occupational Health and Safety Provisions of *The Saskatchewan Employment Act*

The Saskatchewan Chamber of Commerce (SCC) is pleased to provide this submission in response to the discussion paper on the review of the Occupational Health and Safety Provisions of *The Saskatchewan Employment Act*. The SCC is the *Voice of Business* in Saskatchewan. The Chamber, which is supported by provincial businesses and local Chambers of Commerce, advocates for policies that increase the attractiveness and competitiveness of operating a business in Saskatchewan. Our overarching goal is to make this province the best place to live, work and invest.

The SCC has long advocated for broad recognition of the fact that there is a competitive advantage to operating a safe workplace. On the individual employer's level, competitiveness is dampened when high injury rates disrupt operations and create replacement costs, in addition to whatever compliance costs and penalties government regulation may impose. Further, beyond the workplace and the personal impact to an injured worker, injuries affect the general well-being of society and drive-up public costs, this ultimately hurts the province. It is a competitive advantage for an economy to enjoy a low injury rate and keep workers safe. Nevertheless, the SCC is also very mindful that the regulations imposed to create safer workplace need to be balanced with positive outcomes, practical application, and feasibility. There is always a cost to regulatory compliance. It is critical that government understand and pay close attention to the cost of compliance ensuring a level playing field for all those who participate in our economy. Excessive regulation can create a competitive imbalance that will impair the ability of Saskatchewan enterprise to compete in world markets. It is important to understand that overregulation, or impractical regulatory requirements, can easily erase any advantage offered to the economy through improved safety; regulating through a competitive lens is essential to the stability and growth of our economy.

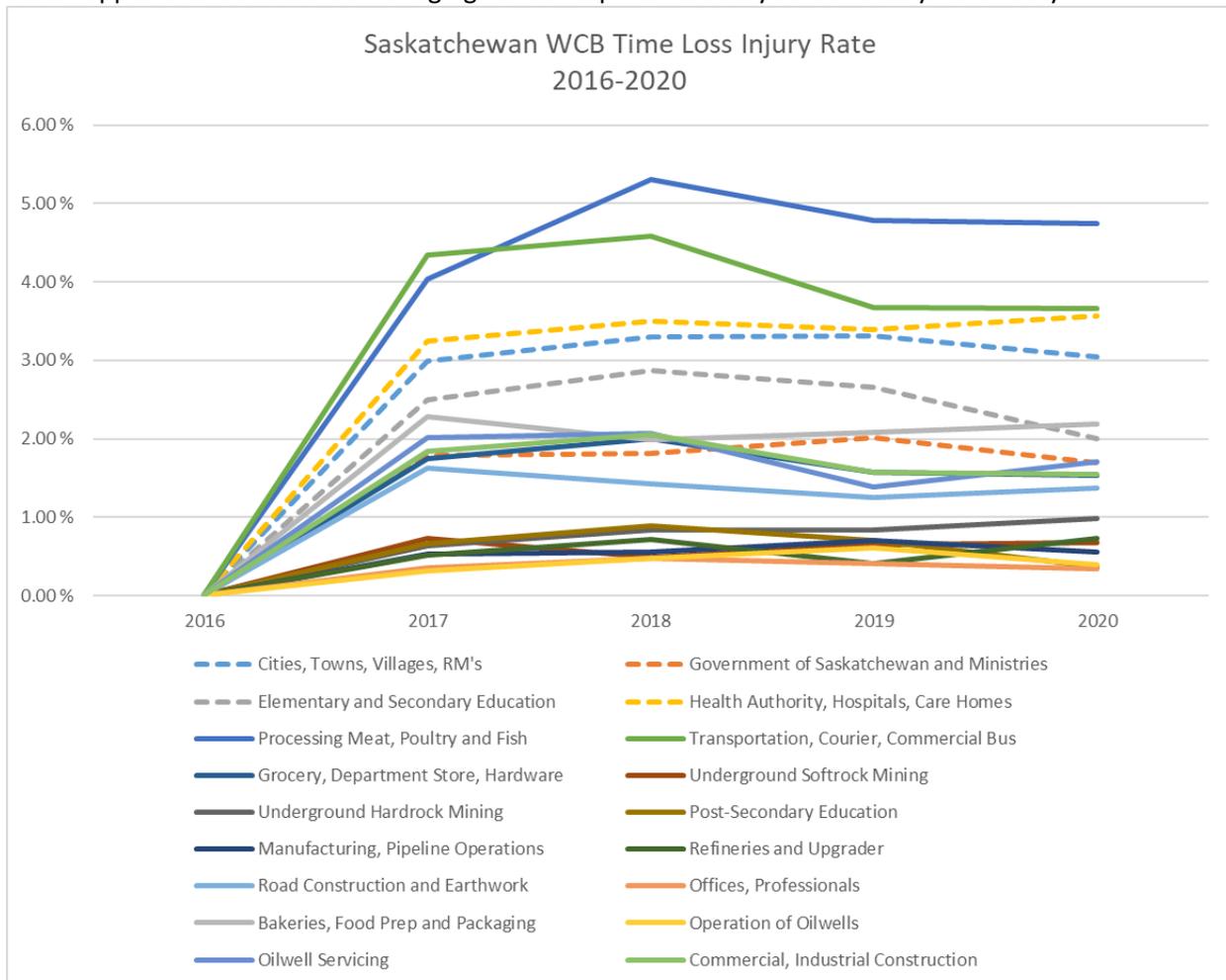
The SCC appreciates the opportunity to provide input into the review of the Occupational Health and Safety Provisions of *The Saskatchewan Employment Act*. Consultation is the hallmark of sound and effective regulatory reform. We also appreciate the calibre of questions being asked; our answers are below. Overall our membership believes the regulatory framework must continue to support compliance by offering practical solutions to the safety concerns and risks inherent in a specific industry or sector of the economy. A targeted, data-driven approach should be the guide to regulatory change.

As noted above, Saskatchewan employers appreciate the importance and social significance of legislation to govern and regulate workplace health and safety. They accept their obligation to create a working environment for all employees which is safe, and which protects workers from the effects of occupational illness and injury. This being said, Saskatchewan's economy, and the nature of work, has

changed significantly over the past decade raising a number of considerations beyond those addressed in the discussion paper.

General considerations on the application of OH&S Provisions

A targeted, data-driven approach should be the guide to regulatory change. The SCC believes regulations must drive action and accountability, any regulation that does not accomplish this is not benefiting worker health and safety and is adding cost and regulatory burden. While not perfect, one of the best ways to track and evaluate worker health and safety in Saskatchewan is the Workers' Compensation Board (WCB) injury rate both for individual firms and sectors of the economy. The WCB rate codes and prescribed industries under the OH&S provisions do not fully align (this issue will be addressed in further detail below) however many of the prescribed industries are reflected on the chart below; *Saskatchewan WCB Time Loss Injury Rate 2016-2020*. The chart illustrates an alarming trend in Saskatchewan, large public agencies such as municipalities, education, healthcare, and government ministries, continue to have a high time loss injury rate and high incident rates of injury despite having predominately lower identified risk and lower injury risk profiles associated with the work carried out in public sector workplaces. The SCC believes this is where a targeted approach is necessary, the private sector appears to be better at managing risk to help workers stay safe and stay fit for duty.



The SCC recommends that more work be done to determine why injury claims in the public sector continue to trend high despite the OH&S provisions that have motivated improved performance in the private sector. It appears that Saskatchewan's injury rate would be significantly lower if the safety systems and programs in public sector workplaces were better managed. Without an understanding of the underlying issues in the public sector it is doubtful additional new provisions placed upon both sectors will have a materially different outcome.

Considerations on the utilization of OH&S penalties

The SCC appreciates that the discussion paper encouraged stakeholders to identify any issues or concerns beyond those specifically referenced. For example, the SCC believes there is an opportunity to put OH&S violation penalties to better use, thereby enhancing workplace safety.

The SCC fully supports the use of penalties as an enforcement mechanism to assure compliance, however, these penalties could be put to better use to create safer workplaces instead of feeding the government's general revenue fund. The SCC would like to see provisions introduced to allow for deferred prosecutions. Ideally an employer could agree to pay a required penalty prior to prosecution, but instead of directing the money into government coffers, the funds could be invested in training, or equipment acquisition, to prevent such incidents in the future. This would not necessarily need to be focused on a single workplace, for example an employer penalty could be used to fund a post-secondary course focused on training future/current workers in their industry on safe operations related to the violation.

To successfully operate this type of system, the Ministry would have an important role. They would need to come to an agreement (voluntary compliance agreement) with the employer regarding the conditions, requirements, and outcomes that would need to be achieved to enhance safety in the workplace and therefore merit the deferred prosecution. After the completion of these requirements, as laid out by the Ministry, the SCC believes the charges against the employer should be stayed.

This approach does not need to be limited to employers prior to prosecution, after a conviction employers found guilty of an offence should have the ability to apply for a conditional sentencing or fine options process (e.g. funding education/training, remediation agreements, etc.). Enabling penalty funds to be used to address the foundational issue that led to the OH&S violation will create positive change for a workplace that will make it a safer place to work.

Definition of a Worker

Should the definition of a "worker" be broadened in any way? Why?

The rapidly changing nature of the employer/employee relationship makes it difficult to predict what the future of the workplace will look like; this unpredictability means that an inclusive not exclusive definition for a worker is required. The SCC recommends eliminating the exclusion regarding "an inmate of a correctional facility participating in a work project or rehabilitation program within a correctional facility." Our organization believes anyone engaged in such training should be required to meet the

duties imposed by the Act and Regulations and in so doing be entitled to the protections provided therein. With respect to the definition of a worker, the SCC proposes the following modification:

gg) "worker" means:

- (i) any individual, including a supervisor, student learner or volunteer, who is engaged in the service of an employer, including individuals working under a contract to provide a service or product; or
- (ii) a member of a prescribed category of individuals.

The SCC believes this definition will properly address gig workers, piece workers and learners; providing clarity and appropriate protection to all citizens regardless of status.

General Duties

Are these general duties sufficient? Why?

The SCC has heard concerns from members regarding the unintended transfer of liability that may be occurring as the nature of work and the workforce shifts. The SCC has repeatedly heard that clarity and education is needed to help all participants in the workplace understand their roles and responsibilities. Further, for small business owners specifically, especially those that do not work in a higher risk industry, they often have not considered the various general duties under OH&S; nevertheless, as the working environment is changing, more of these duties may start to be applicable to them. As they do not have a dedicated person to read, implement & manage all the specifics related to the duties, the Ministry has a role to play in ensuring the information is communicated at a high, summary level to be implemented and reviewed easily.

Assuming the adoption of the SCC's recommendation for an expanded definition of worker, the SCC considers the specific *duties of employers* and *duties of contractors* to be sufficient. Without the expanded definition of a worker, the SCC recommends more clarity be added to the *duties of employers* to reflect the obligation they have for the health and safety of everyone engaged in their service. The SCC considers the *duties for supervisors*, *duties for prime contractors*, and *duties for owners* to be sufficient.

Regarding the *duties of workers*, the SCC recommends that workers be given an additional responsibility to show up fit for duty and able to undertake the work for which they have been retained, or to immediately inform an employer/supervisor if and how they have failed to do so. The SCC believes this is an essential component with regard to workplace safety as it is increasingly common for supervisors to go an entire shift without physically seeing a worker to assess fitness for duty, therefore self declaration is vital. It would also be helpful information for supervisors/employers to have prior to any discussions regarding the granting of medical leave or modification of duties.

With regard to the *duties of self-employed persons*, the SCC recommends that self-employed persons be given an additional duty to look after their own wellness and safety.

The SCC is not convinced that the current legislation appropriately addresses the introduction of new technology processes and practices. The SCC believes that in the narrow scope of technical situations where no expertise exists the onus falls on the supplier to identify OH&S concerns. As such, in this

situation the *duties of suppliers* should be expanded to include providing an analysis of risks and hazards associated with the adoption of new technologies and an obligation to train purchasers of its technology in its safe application and use (employers have the duty to ensure the training is disseminated).

Occupational Health and Safety Program

Is the list of prescribed places of employment in Table 7 of the regulations relevant and sufficient?

Should the requirement be expanded? If so, how?

The safety culture in Saskatchewan has been undergoing a material shift, workplaces that have been historically dangerous, construction and mines for example, have significantly improved injury rates. Unfortunately, as outlined in greater detail above, this has not been the story across the province as the public sector is lagging. The SCC thinks additional analysis needs to be done to determine whether being designated as a prescribed industry has been a driver for improved performance over a recent timeframe, particularly in established industries that have not experienced improved worker health and safety according to the WCB injury rate. Without a tangible link to improved performance the prescribed industry provisions maybe of limited value and should therefore be reconsidered; this determination must be data driven. Nevertheless, the SCC acknowledges that all workplaces have some degree of hazards, some are more mental than physical, and that these hazards should be addressed. The creation of occupational health and safety programs is a tool that various industries have historically benefited from as such education, options, and guidance around these programs should be available, but not mandatory, to all.

If data shows the prescribed industry designation has improved safety performance, the SCC recommends the regulations better link OH&S plans and policies with outcomes. Specifically, the SCC recommends that going forward, any OH&S prescribed industry in the regulations is labelled according to WCB rate code. This would allow for a clearer comparison between OH&S requirements and safety performance. The SCC also recommends that prescribed industries are reevaluated every 5 years and the list realigned with those WCB rate codes that have the highest injury rates. The SCC believes this would allow the OH&S prescribed industry list to remain relevant as Saskatchewan's economy evolves.

Occupational Health Committees and Occupational Health and Safety Representatives

Are the requirements for occupational health committees and occupational health and safety representatives adequate? Why?

Is the list of prescribed places of employment sufficient and relevant?

The SCC acknowledges that OH&S committees and safety representatives can be impactful when they are effective, but their mere presence alone does not make workplaces safer. Where OH&S committees and safety representatives are engaged, they have successfully created a safety culture that reduces occupational illness and injury. They do so without a reliance on the Regulations and the Act, but a reliance on dialogue, education, and the application of common sense, given their expertise and experience in their industry, workplace and job site. These solutions offer better workplace safety improvements than broad, government instituted regulations.

Nevertheless, for this process to be effective OH&S committees and safety representatives must demonstrate a commitment to continuous improvement and a focus on safety. The SCC recommends that the regulations articulate that participation on an OH&S committee requires a commitment to improve safety performance and outcomes, and that a lack of participation and engagement by representatives should lead to their removal. Any actions taken in this review regarding the provisions of OH&S committees and safety representatives need to focus on organizational and operational effectiveness, as opposed to the quantitative number of committees in operation.

Employers in some low injury rate code industries have concerns about the applicability and practicality of the threshold for requiring an OH&S committee. As noted above, the SCC strongly believes the ability of an OH&S committee to serve an effective purpose is significantly more important than the number of workplaces operating such committees. The establishment of committees in some workplaces is impractical in many respects as the resources committed and the training required to meaningfully participate is not balanced with the benefits of such committee being in operation. Considering this, the SCC recommends that the requirement for OH&S committees be linked to industry as opposed to the number of employees. At minimum, the SCC would like to see the number of employees required in a non-prescribed workplace before the requirement of a OH&S committee be increased to 20. The SCC considers the requirement for an OH&S committee or safety representative for prescribed places of employment to be adequate.

As explained in the Occupational Health and Safety Program section, the SCC recommends that the prescribed place of employment list be altered to reflect the WCB rate code and injury rates. Those codes that have the highest injury rates should create the prescribed places of employment list.

Duties of Committees:

Are the duties of an occupational health committee sufficient?

Which party should be responsible for ensuring that a committee meets and that minutes are recorded and posted?

Is there a need for additional measures to ensure enforcement of these duties?

As explained above, the SCC recommends that a requirement be put in place that participation on an OH&S committee reflects an obligation for performance, and that a lack of participation and engagement by representatives should lead to their removal. The SCC also believes additional consultation should be done on potential mechanisms to better ensure recommendations are acted upon as a component of the committee performance and accountability measures. Beyond this, the SCC believes that duties of the OH&S committees are sufficient.

The SCC accepts that it is the employer's responsible to ensure there is a committee and that meetings are held, and minutes made available. The employer also has a responsibility to ensure the committee is performing well and accountable for specific objectives.

Harassment in the Workplace

Is it appropriate to align the definition of harassment in *The Saskatchewan Employment Act* with the definition of prohibited ground under *The Saskatchewan Human Rights Code, 2018*?

Do you think the scope of the harassment provisions are sufficient? Should the provision be broadened?

The SCC supports harmonized policies wherever possible and trusts employers and workers would benefit from a uniform definition. Further to this, the SCC strongly supports expanding the harassment in the workplace provisions to include gender identity. As such the SCC recommends aligning the definition of harassment in *The Saskatchewan Employment Act* with the definition of prohibited ground under *The Saskatchewan Human Rights Code, 2018*.

Beyond this, the SCC considers the scope of the harassment provisions to be sufficient. In workplaces where harassment becomes an issue there is often a lack of understanding regarding the duties of workers and supervisors. The SCC believes education is the key to solving these issues as opposed to a broadening of the harassment provisions.

Policy Statement on Violence and Prevention Plan

Is the list of prescribed industries in the regulations relevant and sufficient?
Should the requirement be expanded? If so, how?

The SCC considers the list of prescribed industries in the regulations to be sufficient. While violence is an issue in some workplaces, others have never had violence and through no foreseeable circumstance will ever experience violence in the workplace. It is not reasonable to expect these workplaces to create an unused violence policy and prevention plan. Regulations must be linked to practical action to benefit worker health and safety, and expanding the workplaces required to have a violence plan and prevention plan will not accomplish this goal. Further to this, SCC does acknowledge that workplaces where violence has the potential to occur have an obligation train staff to deal with potential hazardous engagements while prioritizing worker health and safety, in these workplaces violence policy and prevention plans have merit.

Right to Refuse Unusually Dangerous Work

Is this process current and relevant? Do you see any opportunities for improvement?

Saskatchewan was a leader with regards to the establishment of protections for workers' related to the right to refuse unusually dangerous work, this protection has since rolled out to many other jurisdictions. The SCC supports a worker's right to refuse unusually dangerous work, and recommends the existing provisions be maintained unchanged as they have generally worked well for the province.

The SCC thinks there is an opportunity for additional clarity regarding the right to refuse unusually dangerous work. Specifically, it should be more clearly defined that if, after going through the proper channels, a job duty has been deemed safe and a worker still refuses to perform the task the employment protections, such as protection from disciplinary action, offered under the Right to Refuse Unusually Dangerous Work provisions are forfeited. To support the enhancement of this clarity, the Chamber believes there is an opportunity for improved education for both employers and workers regarding these provisions.

Medical Examinations and Reports

Should the Director of Occupational Health and Safety have access to medical information for prosecution purposes without a worker's consent?

The SCC recommends the Ministry conduct an analysis to determine why workers have not provided consent to have medical information accessed in the past; more knowledge may allow this issue to be mitigated in the early stage. Nevertheless, the SCC appreciate that an absence of medical evidence can hinder the ability of the court to fully understand the magnitude of the infraction during a prosecution. As such, the SCC supports the director of occupational health and safety having access to medical information for the very narrow circumstances of prosecution purposes without a worker's consent. However, the SCC recommends that a worker's consent always be sought first.

Inquiry by an Occupational Health Officer

Is there a need to clarify who can be present in an individual's interview?
Should the officer have a right to exclude a nominee? If so, on what grounds?

The SCC definitively supports the interviewee having a nominee in the room during the interview process. Interviews are usually integral to the investigative process; therefore, the purpose of a nominee must be to observe and not to participate. The Ministry does not need to clarify who can be present in an individual's interview so long as the nominee is of the individuals choosing and remains an observer in the interview. Nevertheless, the SCC recognizes and supports that the officer needs the ability to exclude a nominee who is not allowing the full disclosure of evidence. In such situations the officer should have the right to exclude the nominee so long as it does not exclude the interviewee from having somebody else, of the interviewee's choice, in the interview. As always, the employers and workers of Saskatchewan expect investigations to be conducted in a balanced and unbiased manner consistent with the principles of due process and natural justice.

Recording Inspections

Is there a need to include recording or photography use for inspections in the Act?

Given the current climate, access to technology, and the value of photo evidence for successful defence or prosecution, the SCC recommends that some form of digital evidence be included as supplemental evidence in the Act. The SCC believes that due to the rapid progression of technology the Act should avoid identifying specific types of digital evidence acceptable. The SCC further recommends that a requirement for disclosure be put in place when bodycams or other recording devices are in use. Finally, if an employer requests a copy of digital evidence, one should be provided without delay.

Prepayment For Fuel

Is there a need to introduce amendments that will require prepayment for fuel in Saskatchewan?
In what situations, if any, should prepayment be required?

The SCC did not receive adequate input from members to make a recommendation with regards to the prepayment for fuel. However, foundationally the SCC warns the government against adding regulation where there is not a clear, illustrated need in Saskatchewan. The SCC believes government action regarding the prepayment for fuel should be data driven.

Additional Item

In addition to the recommendations outlined above, the SCC lends its support to the Saskatchewan Mining Association's (SMA) request that, should changes to the Act necessitate further revisions of the OH&S Regulations, 2020, the Ministry correct the drafting error that occurred during the development of the First Aid/First Aid Attendant provisions of The Saskatchewan Occupational Health and Safety Regulations, 2020. Please reference the SMA submission for greater detail on this recommendation.

Conclusion

Thank you again for the opportunity to submit comments on the discussion paper on the review of the Occupational Health and Safety Provisions of The Saskatchewan Employment Act. Saskatchewan employers appreciate the importance of legislation to govern and regulate workplace health and safety and take their responsibilities seriously. The improved attitude toward safety in Saskatchewan clearly illustrates that progress being is made. While generating recommendations from this review, the SCC encourages the Ministry to be fundamentally cautious with regulatory change, unintended consequences can have material impacts on workplaces. Our organizations also asks that targeted changes only be made if supported by clear data.

Overall, Saskatchewan employers generally perceive the OH&S provisions as operating well. Nevertheless, SCC members are always aware of the cost of compliance that accompanies an onerous legislative and regulatory regime. The government should never impose an unfair set of obligations that negatively impact the ability of businesses to complete in a global marketplace, and while safe practices build competitiveness, a regulatory balance must be protected.

In response to the discussion paper on the review of the Occupational Health and Safety Provisions the SCC recommends the following:

1. That further analysis but undertaken to determine why injury claims in the public sector continue to trend high despite the OH&S provisions that have motivated an improved performance in many private industries. The SCC believes that without an understanding of the underlying issues, it is doubtful additional new provisions will have materially different outcomes.
2. That provisions be introduced to allow for deferred prosecutions, voluntary compliance agreement, and penalty payment options outside of the general revenue fund.
3. That the definition of a worker be amended to be inclusive not exclusive.
4. That amendments be made to the duties of workers, self-employed persons, and suppliers.
5. That no expansion of prescribed places of employment or occupational health and safety provisions should occur until the completion of recommendation 1.

6. That going forward any OH&S prescribed industry in the regulations is classified according to WCB rate code and that injury rate determines prescribed industries.
7. That the regulations articulate that participation on an OH&S committee requires a commitment to improve outcomes, and that a lack of participation and engagement by representatives should lead to their removal. The SCC also believes additional consultation should be done on potential mechanisms to better ensure recommendations are acted upon and performance is measured.
8. That the requirement for OH&S committees be linked to industry and injury rates as opposed to the number of employees, or at minimum, the SCC would like to see the number of employees required in a non-prescribed workplace before the requirement of a OH&S committee be increased to 20.
9. That the definition of harassment in *The Saskatchewan Employment Act* be aligned with the definition of prohibited ground under *The Saskatchewan Human Rights Code, 2018* without further expansion of the provisions.
10. That the list of prescribed industries with a violence policy and prevention plan is sufficient and does not require expansion.
11. That the right to refuse unusually dangerous work provisions be maintained unchanged.
12. That a worker's consent always be sought first, but the director of occupational health and safety should have access to medical information for the very narrow circumstances of prosecution purposes without a worker's consent.
13. That some form of digital evidence be included as supplemental evidence in the Act but that a requirement for disclosure regarding the use of such devices for evidence collection also be included.
14. That the Ministry correct the drafting error that occurred during the development of the First Aid/First Aid Attendant provisions of The Saskatchewan Occupational Health and Safety Regulations, 2020.

Regulatory change inevitably catches people by surprise. It is therefore incumbent upon the Ministry to ensure that as changes are evaluated and potentially implemented, they are well communicated based on the need to encourage voluntary compliance. The Saskatchewan Chamber of Commerce once again thanks you for this opportunity. If you require any further information or if the SCC can help support your efforts in any way, please contact Kristin Mckee at kmckee@saskchamber.com.

Sincerely,

Originally signed by:
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