

A
REPORT TO
THE HONOURABLE
HARRY BAINS
MINISTER OF LABOUR

**RECOMMENDATIONS
FOR
AMENDMENTS TO THE
LABOUR RELATIONS CODE**

Submitted by the
Labour Relations Code Review Panel
Michael Fleming, Sandra Banister Q.C., Barry Dong

August 31, 2018

August 31, 2018

The Honourable Harry Bains
Minister of Labour
Legislative Buildings
Victoria B.C. V8V 1X4

Dear Minister Bains,

On February 06, 2018, this Panel was appointed to review the B.C. Labour Relations Code and provide recommendations for any amendments or updates to the Code we believe to be appropriate.

We appreciate the opportunity to undertake this important task and we respectfully submit our Report with recommendations for Code Amendments for your consideration.

Yours truly,



Michael Fleming



Sandra Banister, Q.C.



Barry Dong

Table of Contents

Introduction	1
Background and Context for the Report	1
Changes to the B.C. Economy and Workplaces	3
Demographic Changes in B.C. Workplaces	4
Growth of Non-Standard Work	4
Globalization and Fissuring of the Economy	4
Technological Change	5
Growth of the Service Sector	6
Union Density	6
Conclusion	6
Issues Identified in the Consultation Process	6

PART 1- Introductory Provisions

Duties Under the Code	7
Section 3 of the Code	8

PART 2 - Rights, Duties and Unfair Labour Practices

Employer Communication with Employees	8
Unfair Labour Practices	9
Remedies	9

Part 3 - Acquisition and Termination of Bargaining Rights

Access to Collective Bargaining	10
Certification Votes	13
Voting Process	14
Membership Evidence	14
Employee Lists	15

Change in Union Representation (Raids)	15
Sectoral or Multi-Employer Certification	17
Successor Unions and Collective Agreements	17
Successorship	18
Successorship Issues in the Forestry Sector	21
Part 4 - Collective Bargaining Procedures	
Statutory Freeze of Terms and Conditions after Certification	22
Filing Collective Agreements with the Board	23
Facilitating the Evolution of Co-operative Labour Relations	23
First Collective Agreements	24
Sectoral Collective Bargaining	25
Part 5 - Strikes, Lockouts and Picketing	
Secondary Picketing and Replacement Workers	26
Definition of Picketing	26
Part 6 - Essential Services	
Education	27
Part 7 - Mediation and Dispute Resolution	28
Part 8 - Arbitration Procedures	
Expedited Arbitration	30
Review of Arbitration Awards	31
Standard for Review of Board Decisions	32
Part 9 – Labour Relations Board	
Revocation of Bargaining Rights-Partial Decertification of a Bargaining Unit	33
Part 10 – Miscellaneous	

Fines	34
Other Issues	
Construction Industry	34
Definition of Trade Union	35
Resources for the Labour Relations Board	35
Appendix A Labour Code Amendment Act	40
Appendix B Proposed Amended Labour Relations Code	49
Appendix C Province of B.C. Information Bulletin Media Release	147

Report of the B.C. Labour Relations Code Review Panel

Introduction

On February 06, 2018, the Minister of Labour appointed us as a Labour Relations Code Review Panel (the “Review Panel”) with a broad mandate to review the B.C. *Labour Relations Code*, RSBC 1996, c 244 (the “Code”) and to provide recommendations for any amendments or updates to the Code. The terms of reference directed us to consult with the community, consider labour law developments in other Canadian jurisdictions and to:

.....assess each issue canvassed from the perspective of how to “ensure workplaces support a growing, sustainable economy with fair laws for workers and business” and promote certainty as well as harmonious and stable labour/management relations.

The conceptual and structural framework for the Code was established 45 years ago and there have been significant changes in the B.C. workforce, workplaces and economy in the intervening decades. Canada, Alberta and Ontario recently reviewed and amended their legislation.¹

We undertook a public consultation process during which we received 108 written submissions and replies, 94 emails and 83 oral presentations from stakeholders and individuals at 10 public meetings in communities across B.C. Following this extensive public consultation we met with several groups, including the BC Federation of Labour, the BC Business Council, the Arbitrators Association of B.C., the Labour Relations Board (the “Board”) and the Labour Subsection of the Canadian Bar Association. Input received from the labour relations community was invaluable to this review.

Background and Context For the Report

The existing Canadian labour relations paradigm, the Wagner Act model, which is unique to North America, was introduced in Canada in 1944². Prior to that time, unions had few legal rights, employers were not legally required to recognize a union and the terms of any collective agreement negotiated were enforced by employee job action.

In the early 1940s, Canada experienced a surge of strike activity which, in 1944, culminated in more than a third of the workforce being involved in job action. In order to achieve industrial stability, the federal government enacted Order-in-Council PC 1003 (“PC 1003”) as part of the *War Measures Act*, RSC 1927, c 206 which provided legal recognition of unions as bargaining agents if a majority of employees signed union membership cards. The employer was then required to engage in good faith collective bargaining.

In 1967, the federal government established the Federal Task Force on Labour Relations (the “Woods Task Force”), a seminal development in Canadian labour law. Its recommendations established the conceptual framework for Canadian labour legislation. The Woods Task Force concluded collective bargaining, while imperfect, is the best mechanism to accommodate the competing interests of employers and employees in a free and democratic society.

The B.C. *Code*, enacted in 1973 (the “1973 Code”), was the first labour legislation in Canada to give effect to the Woods Task Force recommendations. Until then, responsibility for labour law in Canada was shared by the courts and labour boards. The *Code* represented a new labour relations approach including creating the Board, an expert tribunal with exclusive jurisdiction to determine many issues previously decided by the courts. The Board was given a central role in administering the *Code* and effecting its legislative goals through its policy making authority. The 1973 Code established a problem-solving approach to labour relations through extensive use of informal processes and mediation.

The 1973 Code received the unanimous support of all members of the legislature.

Professor Paul Weiler, widely recognized as one of Canada’s leading labour law experts, had a central role in the creation and administration of the 1973 Code. He considered collective bargaining to be the most important way of achieving workers’ “voice” in the workplace which is essential to labour relations law and policy.³

While amendments in 1975, 1976 and 1977, clarified or expanded the Board’s authority, the *Code* remained relatively unaltered until 1984. The 1984 amendments included a change in the certification process from signed membership cards (“card check”), which had been the norm for decades, to a mandatory secret ballot certification vote (“secret ballot vote”). A related amendment eliminated a union’s ability to represent employees on a sectoral or geographic basis where the majority supported the union and a majority of employers consented. Another significant amendment restricted secondary picketing at other sites of a struck employer.

In 1987 further substantive changes were made when the *Code* was replaced by the *Industrial Relations Act*, RSBC 1927, c 206. Those changes, made without consultation with the community, resulted in organized labour boycotting the Industrial Relations Council, which replaced the Board, until the fall of 1991.

In 1992, a new government appointed a committee of special advisors to conduct a review of labour relations in B.C. That committee engaged in broad public consultations and made a number of recommendations for labour law reform (the “1992 Report”), most of which were adopted in the 1992 amendments to the *Code*. Those included the establishment of an ongoing mechanism for reviewing the *Code* (Section 3) and reinstatement of card check.

In 1997, the government introduced a number of amendments to the *Code* without public consultation. That raised a number of concerns, particularly from employers, and in response, the government withdrew the legislation and appointed another committee of special advisors. In 1998, the report of that committee made recommendations for minor changes to the *Code*, some of which were adopted in the 1998 *Code* amendments.

In June 2001, a new government introduced substantive amendments to the *Code* without public consultations, including adding education as an essential service, repealing sectoral collective bargaining in the construction industry and reintroducing secret ballot votes. Following those amendments, in March 2002, the Minister of Skills Development and Labour released a

discussion paper proposing *Code* amendments. Submissions were provided directly to the Minister. In May 2002, the government introduced two additional amendments to the *Code*, adding the duty to foster the employment of workers in economically viable businesses (Section 2 (b)) and expanding employers' freedom to express their views about unionization (Section 8). In December 2002, the government appointed another Section 3 committee of special advisors to analyze and provide advice to the Minister but not to make recommendations for *Code* amendments (2002 Report p. 6).

Since that time there has been no further public consultative review of B.C. labour relations or amendments to the *Code* until the appointment of this Review Panel.

In the intervening 16 years, the Supreme Court of Canada issued a number of decisions expressly recognizing the importance of freedom of association and collective bargaining: *Health Services-Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27; *Ontario (Attorney General) v. Fraser*, 2011 SCC 20; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 ("Mounted Police"); *Meredith v. Canada*, 2015 SCC 2. In *Mounted Police* the Supreme Court of Canada concluded freedom of association guarantees employees the right to: "meaningfully associate in the pursuit of collective workplace goals" [which] "includes a right to collective bargaining" (para 67).

The Court stated:

Collective bargaining constitutes a fundamental aspect of Canadian society which "enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work" (Health Services, at para 82). Put simply, its purpose is to preserve collective employee autonomy against the superior power of management and to maintain equilibrium between the parties. This equilibrium is embodied in the degree of choice and independence afforded to the employees in the labour relations process (para 82).

In our view, periodic review of the *Code* is necessary to ensure its relevance and applicability to the changing economy and workplaces.

Changes to the B.C. Economy and Workplaces

The Wagner Act model was implemented in an economy characterized by larger plants and enterprises. Employers typically had long term stable relationships with relatively homogeneous full time work forces.

In 1973, the B.C. economy was characterized by large scale resource based operations and enterprises employing mostly male workers who worked, and usually lived, in close proximity to each other. These employees often shared a variety of common interests, language and culture. They participated in integrated work processes and most worked full time for the same employers for many years. Today, the economic landscape, demographics, nature of work and the manner in which businesses operate in B.C. are very different.

Demographic Changes in B.C. Workplaces

The demographics of the workforce have changed dramatically. By 2016, women's participation in the BC workforce had increased to almost 50%.⁴ There has been a marked growth in the number of visible minorities, first nations' peoples and disabled workers in B.C. workplaces.⁵ The workforce is aging with people working longer⁶. The workforce today is much better educated and credentialed than in the 1970's.⁷ The employment rate for both men and women with a high school education or less has been steadily declining. As is the case nationally, there has been a significant growth in knowledge based work and the knowledge economy.⁸

Growth of Non-Standard Work

In Ontario it is estimated that non-standard work makes up 26.6% of the workforce, of which approximately 30% are vulnerable workers in precarious employment.⁹ A federal government study estimates only 60% of Canada's workforce is engaged in full-time standard employment relationships.¹⁰ Of the 40% of the workforce in non-standard jobs, 20% work part-time or on short-term contracts, 10% are casuals, and 10% are self-employed. Those workers tend to be young, women, visible minorities and recent immigrants.¹¹

The BC Business Council suggests there are three fundamental labour market trends.¹² First, there has been a substantial change from stable predictable employment to more precarious work and self-employment. A second identified trend over the past 30 years is an increasing income gap between skilled and non-skilled workers. Thirdly, there is a declining quality of jobs with more workers working part time.¹³ Also, temporary jobs have grown significantly more than permanent jobs with a higher percentage of women employed in temporary jobs.¹⁴

While some non-standard work can be highly paid and secure, significant components have low job security, low income, limited training, uncertainty in scheduling and limited opportunities for advancement. The marked increase in non-standard work results in substantially less employment security and poorer working conditions.¹⁵ Workers in non-standard employment often have little control over their working hours and face more occupational health and safety risks due to a combination of poor training and a lack of supervision.¹⁶

There is a continuing erosion of middle class jobs, increasing precarity, and polarization between relatively low paid precarious work and highly paid skilled workers, and fewer middle skilled jobs.¹⁷

Globalization and Fissuring of the Economy

Since the mid-1980's, markets have become increasingly globalized. The expansion of the outsourcing of business services is made possible by technological advances and global networking. There is a related increase in capital mobility and growth in price competition including labour costs.

The past 25 years have seen significant and progressive dismantling of barriers to the movement of goods, capital and people. Competition among firms is increasing with many firms operating globally, often on a 24/7 basis. This creates pressure for more flexibility in working relationships. The growth of globalization and capital mobility also raise significant concerns whether businesses will invest in B.C.

Labour laws are only one of many factors which influence investment decisions. Often, more important factors include: political and social stability, the level of skills and education of a workforce, infrastructure, transparency and predictability of the legal and regulatory system and the size and growth potential for product markets.¹⁸ For example, the movie, television and production industry is extremely mobile and globally competitive yet it has grown from \$430 million in total production in 1995 to more than \$3.4 billion in 2017, employing over 50,000 employees. This demonstrates collective bargaining can be successful in the context of globalization and capital mobility.

Globalization has been accompanied by what has been characterized as the fissuring of the economy. Companies have increasingly organized their operations into core and contingent components utilizing outsourcing and contractual relationships with a number of smaller highly competitive companies to reduce costs and achieve greater flexibility. Companies are using more part-time, agency, contract and temporary workers.¹⁹

Fissuring occurs when large companies reduce their workforces and fragment their previously integrated work processes by outsourcing and contracting with a large number of smaller highly competitive firms for the provision of goods and services. Those small companies hire, are responsible for the working conditions of the employees and assume all liability, including compliance with labour laws. The lead company controls the products and services. These small companies must meet contractual requirements, standards, product delivery and quality or risk termination of their contract. An example of the phenomenon is a building owner who contracts with cleaning companies, security companies and landscapers.

Franchising is another example. Franchisees employ the workforce and make significant financial investments to obtain the right to operate under the franchisors' brands yet many of the critical business decisions are made by the franchisors, which have no liability for the workforces. Franchisors write and enforce detailed contracts and manuals which cover virtually all aspects of the business. Franchisees must meet the franchisors' conditions to continue to operate, which heightens their vulnerability to cost pressures including wages and benefits.

Fissuring of the economy results in costs and liabilities being shifted to the smaller companies, placing downward pressure on wages and increasing precarious work.

Technological Change

There has been a significant growth in skills-based work, technology and the knowledge economy in B.C. Computer technology and the internet have resulted in the rise of global networking and offshore outsourcing.

The phrase "gig" economy was coined during the 2008 financial crisis when unemployed workers made a living by "gigging" or working several part-time jobs with payment for individual tasks. The gig economy has been accelerated through the use of technology to connect workers with consumers for one-off jobs, performed on-line or in person, by on-demand workers. Services range from grocery delivery and driving (e.g. Uber and Lyft) to accounting, and music production. Many companies use individuals who are characterized as independent contractors rather than employees. An increasing number of virtual employees advertise their skills and perform work through on-line platforms on short-term contracts for companies around the world.

This phenomenon is creating a global labour marketplace with significant implications for compensation and related areas.²⁰

This kind of work makes it difficult to determine who the employer is and where the person works, which are necessary pre-conditions for a collective bargaining relationship under the *Code*. The traditional concepts of employment may no longer be applicable in the gig economy.

Growth of the Service Sector

The B.C. economy has shifted dramatically from resource extraction, manufacturing and large scale plants to the service sector which now accounts for 80% of employment. Between 1976 and 2017, the goods producing sector in B.C. declined from 30.5% of all employment in B.C. to 19.9%, while the service sector increased from 69.5% to 80.1%.²¹

The largest growth in the service sector has been at the opposite ends of the wage spectrum. Employees with professional, scientific and technical business skills (currently the third largest sector) are relatively well paid. At the other end, the accommodation and food services sector has the lowest rate of pay. The number of people employed in accommodation and food services has doubled (to 182,600) since 1986 and is the fourth largest employment sector in B.C.²² The compensation gap between those two sectors continues to increase.

Union Density

In 1983, union density in B.C. was 45.6%, which was considerably above the national rate.²³ Between 1981 and 2004, B.C. experienced the largest decline in union density of all Canadian jurisdictions.²⁴ Density in the private sector in B.C. has fallen from 24% in 1997 to 16.7% in 2016.²⁵ The sharpest decline occurred between 1997 and 2006, likely the result of the major restructuring of the forest industry and the steep decline in manufacturing.²⁶ In 2017 the highest density, approximately 65%, was in the public sector.²⁷ Industries with the lowest density in 2017 included the fastest growing; i.e. professional, scientific and technical services and the accommodation and food services sector.²⁸ The accommodation and food service sector employs mostly females and has one of the lowest union densities of all sectors²⁹.

Wage levels in accommodation, food services and contract building services are the lowest of all sectors. In the accommodation and food services sector 40% of all workers are part-time, 15% are temporary, 60% of the workforce is female and 10% are self-employed.³⁰

Conclusion

These changes and trends in the B.C. economy and workplaces highlight the need for reform and ongoing review of the *Code*.

Issues Identified in the Consultation Process

Reform of the *Code* has historically been controversial with the exception of the 1973 *Code* and the amendments that flowed from the 1992 Report. During the public hearings the Panel was consistently advised that the transparent, consultative approach of the 1992 panel resulted in the perception of balance and provided legitimacy to that Report and its recommendations.

Employers told us the *Code* is working reasonably well and warned that any amendments may have unintended consequences on stability, competitiveness and investment in B.C. Unions, on the other hand, complained the *Code* has become unbalanced, unreasonably inhibits access to collective bargaining, does not provide sufficient protection for workers and is not responsive to the changes in the B.C. economy and workplaces.

There have been a number of pendulum swings in important *Code* provisions over the past 30 years largely depending on the governing political party. This is not consistent with predictability, certainty or balance. Although not an easy task, it is essential to avoid pendulum swings by implementing balanced changes that are sustainable. Certainty and predictability are important considerations for investment decisions and the competitive position of B.C. in an increasingly globalized economy.

In our view, the principles enunciated by the *Woods Task Force* and Professor Weiler in striking a balance between the interest of employers to operate their businesses and the right of employees to join unions remain important and relevant.

Collective bargaining and freedom of association are essential features of Canadian society and must be given meaningful effect. At the same time creating an environment supportive of business, particularly in the context of our rapidly changing economy, is also important.

Labour relations in B.C. should not result in a binary mutually exclusive choice between the protection of fundamental workers' rights, productivity and business success. Economic growth can be achieved alongside flexible, innovative protections and practices under the *Code*.

While numerous issues and concerns were raised during this public consultation process, this report deals only with those which require discussion or specific recommendations. We have appended proposed *Code* amendments and an amendment act consistent with our recommendations.

PART 1- Introductory Provisions

Duties Under the Code

The Board and others who exercise powers under the *Code* must exercise their authority in a manner consistent with the duties set out in Section 2. Prior to 2002, that provision characterized those obligations as *Code* "purposes" rather than "duties". Several unions proposed reverting to that language. That is a distinction without a difference.

A number of unions proposed eliminating Section 2 (b), which imposes a duty to foster the employment of workers in economically viable businesses, as the *Code* should focus on collective bargaining and access to it and not business viability. We believe Section 2 (b) reflects the reality that employment, business viability, and collective bargaining are integrally connected and the inclusion of that duty contributes to balance in the *Code*.

Recommendation No. 1

The current language of Section 2 (b) be retained.

Section 3 of the Code

One of the significant 1992 amendments was the Section 3 review process which provides an ongoing mechanism for an objective review of the *Code*. This enables the *Code* to be responsive to changes in the workplace and facilitates necessary periodic changes.

The failure to properly utilize this review process in the past, and the passage of 16 years without any substantive public consultative review, has created concerns regarding the fairness and balance of the *Code*. In these circumstances, it is not surprising there are strongly held divergent views on key issues.

There is considerable support for regular, transparent, public consultative reviews of the *Code*.

Recommendation No. 2

Section 3 should be amended to provide that the Minister of Labour must appoint a committee of special advisors to conduct a transparent and public consultation process to review the *Code* periodically and, in any event, not less than every five years.

PART 2 - Rights, Duties and Unfair Labour Practices

Employer Communication with Employees

The language of Section 8 of the *Code*, enacted in the 2002 *Code* amendments, allows broader employer communication during an organizing drive or certification application than all other Canadian jurisdictions. The Board has concluded that language permits employers to engage in anti-union campaigns provided there is no coercion or intimidation.³¹

A number of employers and employer groups advocated having the ability to communicate factual information in a respectful manner to ensure informed employee choice. No one suggested employers should have the right to engage in anti-union campaigns as in the United States. In our view, such campaigns would impact both the exercise of employee choice and potentially poison any subsequent collective bargaining relationship.

We agree informed employee choice is important and we understand an employer's interest in responding to employees' questions about the certification process. However, the interests of employers and employees are distinct and not aligned. It is difficult for employers to provide objective neutral information that best assists the exercise of employee choice. The Board is a neutral body and therefore is better able to provide that information. To fulfill that role, the Board will have to update its existing information guidelines and website, provide information in different languages, and have more information officer(s) available.

In our view, the language of Sections 6 (1) and 8 should be returned to that which existed prior to 2002. This would be consistent with virtually all other Canadian jurisdictions and strikes the appropriate balance between employer speech and the prevention of undue interference with employee choice.

Recommendation No. 3

A. Amend Section 8 as follows:

“Nothing in this Code deprives a person of the freedom to communicate to an employee a statement of fact or opinion reasonably held with respect to the employer’s business”

B. Amend Section 6 (1) by deleting “Except as otherwise provided in Section 8”.

C. Rule 24 of the Board Rules be amended so that when the Board provides notice of an application for certification, it attaches its contact information and particulars regarding rights and obligations under the *Code*, with a direction it be posted.

Unfair Labour Practices

Employers who participated in the public consultation process acknowledged that employers who engage in unlawful interference with the exercise of employee choice should not benefit from that interference.

Between 1990 and 2007, 254 unfair labour practice complaints were filed with the Board, of which 197 were against an employer, 54 against a union and 3 against individuals. Of the 197 complaints filed against employers, 152 were found to have been wholly or partially meritorious. Over 90% of complaints and findings of *Code* breaches involved either unlawful termination or communication during organizing drives or a combination of the two.³²

One study found that unlawful termination resulted in an estimated 31% reduction in the success of applications for certification and that group coercion resulted in an estimated 19% reduction in success rates.³³ This is consistent with the anecdotal information provided during the consultation process that unlawful employer interference significantly impacts the success of organizing drives and the successful negotiation of first collective agreements.

Remedies

Section 14 (4) (f) of the *Code* provides the Board remedial authority to: reinstate individual employees, direct that its decisions be posted in a workplace, make access orders, order a second representation vote or order a remedial certification. The Board’s remedial responses to unfair labour practices are primarily aimed at repairing the harm to individual employees, through remedies such as reinstatement, while remedial certifications are very rare.³⁴

Given the serious consequences of unfair labour practices, it is critical remedies have both a restorative and deterrent effect and not simply be a licence fee for breaches of the *Code*.³⁵

The *Code* has always provided the Board with discretion to impose remedial certification, i.e. to certify a union without evidence of majority support where an employer engages in unlawful interference that casts serious doubt whether a vote will reflect the true wishes of the employees. Section 14 (4) (f) requires a union to establish it would likely have obtained the support of the majority of employees in the bargaining unit but for an employer’s unlawful interference.

The rarity of remedial certifications can incentivize a “hit hard, hit early” strategy of union avoidance and has limited deterrent or restorative utility. The standard for the imposition of a remedial certification is very high; for example, where an employer’s conduct results in employees’ perception of the ballot question being changed from “do you want the Union to represent you?” to “do you want to keep your job?”.³⁶ Unlawful interference that causes employees to fear for their jobs is unlikely to be remedied by a second vote. At the same time, there is limited utility in a remedial certification where there is little or very limited employee support for unionization prior to an employer’s interference.

The Alberta Code was recently amended to give that board discretion to fashion an equitable remedy to fully counteract unfair labour practices.³⁷ This is accomplished by assessing the likely consequences of an employer’s interference and crafting remedial responses to ensure those consequences are fully rectified.³⁸

In our view, remedial certification is the most effective deterrent and remedy for unfair labour practices. Section 14 (4) (f) of the *Code* should allow the Board wider discretion to assess the potential consequences of the interference with employee choice, with sufficient remedial authority to rectify its impact on the organizing drive.

Further, as discussed later in Section 55 of the *Code*, the impact of serious unfair labour practices on the potential success of negotiations for a first collective agreement may be considered by the Board in determining whether a first collective agreement should be concluded by mediation, strike/lockout or arbitration.

Recommendation No. 4

Amend Section 14 (4)(f) to read as follows:

(f) despite section 25(3), if the employees affected by the order are seeking trade union representation the board may certify the trade union if it determines an act prohibited by section 5, 6, 7 or 9 has occurred and that remedial certification is appropriate and equitable to ensure the likely consequences of the unlawful interference on employee choice are fully remedied.

Part 3 - Acquisition and Termination of Bargaining Rights

Access to Collective Bargaining

One of the most contentious labour relations issues over the past 30 years in B.C. is whether certification should be determined by card check or secret ballot vote. Historically, card check systems were the norm in Canada until the 1980’s when some jurisdictions introduced secret ballot vote processes. BC had a card check system from 1947 to 1984 when the secret ballot vote was introduced. Since then, there have been four “swings” in the *Code* between those two regimes depending on which political party formed the government of the day.

Currently, four of the eleven Canadian jurisdictions have a secret ballot vote (B.C., Saskatchewan, Manitoba, Newfoundland and Labrador), while Nova Scotia and Ontario have a hybrid system with card check for certain sectors. In 2017, Ontario retained the secret ballot

vote except in certain sectors (building services, security, cleaning, home-care, community and construction). Alberta recently enacted a card check system with a 65% threshold.

In B.C. there is agreement employees must be able to freely choose whether or not to unionize. However, there are very divergent views regarding how to best give effect to that basic principle.

Proponents of a secret ballot vote say that voting is an integral component of our democratic society and point to concerns regarding the potential for misinformation, peer pressure or even coercion that may arise in a card check system. They also say secret ballot votes are the best gauge of employee choice and enable employees to change their minds in the anonymity of a voting booth. Employers say the secret ballot vote removes any doubts they have whether their employees wish to unionize which will, in turn, positively impact collective bargaining. Employer groups caution that the exercise of a basic democratic right to a secret ballot vote should not be over-ridden.

Unions are adamant employees should not be required to vote twice; once when they sign a card and again at the ballot box. Unions maintain the card check system is the only method of eliminating delay and unlawful interference. As well, it is not possible to adequately remediate the harm caused by unlawful interference during the certification process.

The success rate in card check systems is about 9% higher than under secret ballot votes.³⁹ However, one of the difficulties associated with comparing the relative success rates of the two regimes is that changes to the certification process are typically accompanied by other legislative changes which may negatively impact certification success rates.

A secret ballot process gives rise to two main concerns: the potential for delay and unlawful employer interference.⁴⁰ Under a secret ballot system, employers have more opportunity and incentive to engage in unlawful union avoidance. Longer time frames for certification votes, or lax compliance, negatively impact the success rates for certification. However, employer unfair labour practices continue to be concerns under a card check system.⁴¹

While secret ballot votes are integral to our democratic political system, we recognize that certification votes occur in very different circumstances than political votes. Certification votes occur in the context of the power imbalance between employers and workers in the workplace. Employers control the operation of the business, have the right to fire employees and can curtail or close the business. Unlike political votes, Section 7 of the *Code* limits unions' ability to communicate with workers during working time. Employers, on the other hand, have an unrestricted ability to do so throughout the work day. Political candidates have voters' lists while, in the certification context, unions have limited information to determine the bargaining unit constituency.

Although employers have a legitimate interest in whether their employees choose to access collective bargaining, that interest must be weighed against the fundamental right of employee choice. There is no dispute that unlawful employer interference can significantly influence or undermine the exercise of employee choice. One of the most significant barriers to the exercise of employee choice is employer opposition and, more importantly, unlawful interference. During the public consultation process, we received numerous anecdotal examples, consistent with studies, that unlawful interference has a significant impact on the certification success rate.

Concerns regarding unlawful interference with employee choice during a secret ballot vote are legitimate. The *Code* must protect the right of employees to access collective bargaining.

A vote is a secret decision which removes any doubt in an employer's mind regarding employee wishes, and dispels any concerns of the minority of employees who did not support the union. It also confirms bargaining authority on the union. Secret ballot votes are used to determine employee choice under other sections of the *Code*. For example, a vote is required under Section 33 (revocation of bargaining rights), and no one proposed a vote should not be required for that decision. Unions are democratic institutions which determine significant internal union decisions by votes.

A significant concern of the secret ballot process is delay. However, there are also delays in the card check system, due to disputes regarding membership evidence and revocations. Although fewer votes are required under a card check system, a vote is still required if the threshold is not obtained.

Both certification processes have positives and negatives. In the majority's view, notwithstanding the legitimate concerns relating to the secret ballot vote, it is the most consistent with our democratic norms, protects the fundamental right of freedom of association and choice, and is preferred. However, the exercise of that right must be protected by meaningful and effective remedial authority.

The integrity of the secret ballot vote as a real measure of employee choice depends on *Code* provisions that effectively limit and fully remediate unlawful interference. It is contradictory and unreasonable to assert that a secret ballot vote is the most democratic and preferred mechanism for the expression of employee choice while at the same time permitting conduct that undermines the integrity of the secret ballot votes.

The Panel is acutely aware the secret ballot vote can only be an effective mechanism for employee choice if the *Code* deters and prevents employers from engaging in unfair labour practices and provides meaningful consequences for such practices.

The exercise of employee choice through certification votes must be protected by shortening the time-frame for votes, ensuring the expeditious and efficient processing of certification applications and unfair labour practice complaints, together with expansion of the Board's remedial authority. If these enhanced measures are not effective, then there will be a compelling argument for a card check system.

Recommendation No. 5

The secret ballot vote be retained providing there are sufficient measures to ensure the exercise of employee choice is fully protected and fully remediated in the event of unlawful interference.

Dissent, by Sandra Banister, Q.C.

Employees should not be required to reconfirm their decision to join a trade union by voting. Card check certification should be restored.

Card check certification was the norm in all Canadian jurisdictions, regardless of the political affiliation of the governing party, until the mid-1980's when the certification process became

politicized in several provinces and some right of centre governments replaced card check certification with ballot certification.

Although proponents of ballot certification argue the secret ballot is consistent with Canadian democratic values, as noted in the 1992 report, “The surface attraction of a secret ballot vote does not stand up to examination.” It is undisputed the rate of employer unfair labour practices during organizing drives increases dramatically with ballot certification. The unavoidable delay between the application for certification and the vote invites anti-union campaigns and provides opportunities for employer unfair labour practices. Further, workplaces are not democratic institutions; the power imbalance, the disproportionate influence employers have on their employees and the impact of threats to job security must be recognized.

Employer concerns that the card check system does not accurately reflect employee choice are contradicted by the paucity of attempts to revoke union membership cards. The idea that employees may be coerced into joining a trade union is not supported by unfair labour practice statistics. Nor is there any evidence to support the suggestion that some employees join trade unions due to peer pressure. To suggest employees sign union cards capriciously, or are not making an informed choice when they do so, ignores the fact the decision to join a trade union is often difficult. We heard anecdotal evidence that employees are frequently concerned they will be fired if their employer learns they sign a union card. Further, card check actually requires greater employee support than the ballot system since the threshold, which ranges from a simple majority to a super majority of 65%, is based on all the employees in the unit, rather than simply the majority of those voting.

The freedom to associate is a Canadian value enshrined in the *Canadian Charter of Rights and Freedoms* (“*Charter*”).⁴² Preserving employee choice, free of employer interference, is critical to that right. While I fully support this Report’s recommendations to deter and remedy employer interference during organizing campaigns, card check certification remains the single most effective mechanism to avoid unlawful employer interference and to ensure employee choice.

Certification Votes

Time-Frames

Section 24 (2) of the *Code* provides a 10 day period between an application for certification and the vote. Other Canadian jurisdictions have shorter time limits of five business days or seven calendar days. Ontario recently reduced its time limit to five days, excluding holidays and weekends.

The time within which a vote is held should be reduced to be more consistent with other Canadian jurisdictions, limit the opportunity for improper interference and permit sufficient time to arrange the vote. Further, in the view of the majority, it should also allow employees time, in a protected environment, to exercise their true wishes whether to join a union.

Recommendation No. 6

A certification vote under Section 24 (2) and a revocation vote under Section 33(2) of the *Code* must occur within five days, excluding week-ends and statutory holidays following an application for certification.

Voting Process

During the public consultations the Panel heard a number of concerns relating to the voting process. Any voting process should maximize access and participation of affected employees.

Mail ballots became prevalent due to lack of Board resources and because returning officers were employed by the Employment Standards Branch. Employers and unions told us that mail ballot votes are problematic, contribute to delay and should be the exception. We agree. Further, the Board must determine and control the voting process.

Voting usually occurs in the workplace, which some unions see as intimidating to employees. The Ontario legislation was recently amended to allow votes at neutral locations such as schools, places of worship or government offices located close to the workplace, or by electronic methods, telephone or a combination of the two. However, offsite voting may impede voter participation. While there is considerable support for exploring alternative forms of voting, which we encourage the Board to do, there are limits to current options. Many isolated workplaces lack reliable access to internet or cell phone coverage and electronic voting is expensive and does not allow for challenges to votes.

Recommendation No. 7

- A. Amend Section 24 so that mail ballots only occur with the agreement of both parties or where the Board is satisfied there are exceptional circumstances and there are no other viable alternatives. In those circumstances, the Board must ensure mail ballot voting is completed expeditiously.
- B. Amend Section 140 and Regulations 7 and 8(2)(a) to make it clear the Board determines the date, time, place, and manner of voting under Part 3 and to require the returning officer be an employee of the Board.

Membership Evidence

Regulation 3 of the *Code* provides that membership cards are valid for 90 days.

Many unions stated the short validity of B.C. membership evidence, together with other features of the modern economy (smaller workplaces, variety of shifts, working from home and remote worksites, and turnover) inhibit organizing efforts. Membership evidence is valid in Ontario and Canada for one year, in Alberta and Manitoba for six months and in Saskatchewan and the Maritime Provinces for 90 days.

On balance, the current 90 day time-frame unduly restricts organizing beyond single sites, particularly in the context of the changes to the economy and workplaces.

Recommendation No. 8

Regulation 3 be amended to provide that membership evidence be valid for a period of six months.

Employee Lists

The Panel heard that features of the modern workplace make it challenging for unions to determine the bargaining unit constituency and communicate with employees. These include employees being geographically dispersed, working on a variety of different shifts, and more casual or temporary employees. Some suggest this be remedied by requiring the employer to provide the union with an employee list and contact information during an organizing drive.

In B.C. the Board obtains a list of employees when it receives an application for certification and, only if threshold is met, provides the Union with a voters list without personal information. We heard some employers fail to provide employee lists in a timely manner.

Ontario recently amended its legislation to provide that a union, that has the support of at least 20% of the employees in a proposed unit, can request a list of the employees with phone numbers and e-mails. It is the only Canadian jurisdiction that requires employers to disclose employee information prior to an application for certification. Some parties objected as this would infringe employee privacy.

While the difficulties and complexities associated with organizing in the modern economy are real, so are privacy concerns. From a practical perspective, unions would often be reluctant to make such a request because doing so would alert the employer of an organizing drive at an early stage. On balance, we do not propose the production of employee lists prior to an application for certification. However, upon receipt of a certification application, the *Code* should expressly require employers to provide an employee list to the Board in a timely manner.

Recommendation No. 9

Amend section 140 of the *Code* to enable the Board, upon receipt of an application for certification, to require the employer to provide a list of employees in the proposed bargaining unit within such time as the Board determines.

Change in Union Representation (Raids)

Section 19 of the *Code* provides for raids in the seventh and eighth months of each year a collective agreement is in effect. Although employees should have a right to change their bargaining representative, raids are divisive and disruptive to employers, unions and employees.⁴³ In the public consultation process, there was considerable support from unions and employers for reducing the frequency of the open period for raids to correspond to other Canadian jurisdictions. The annual open period in B.C. is the exception in Canada. A number of Canadian jurisdictions, including Ontario and Canada, limit the open period for raids to the last three months for collective agreements of up to three years in duration.

The B.C. and Yukon Territory Building and Construction Trades Council (“BCYT”) and the Bargaining Council of B.C. Building Trades Unions (“BCBCBTU”) expressed concern the current open period frequently requires raids in the winter months when the construction workforce is at its lowest and the potential voting constituency is not representative. The Panel recognizes those are specific issues relating to raids in the construction industry.

The development and evolution of a productive bargaining relationship requires time. In the case of a newly certified bargaining unit the possibility of a raid immediately after certification is problematic. In our view, the frequency of open periods in other Canadian jurisdictions provides a more balanced approach which recognizes the disruptive effects of raids. However, replacing the current seventh and eighth months with the last three months of a collective agreement would divert attention from bargaining.

Recommendation No. 10

A. Repeal Section 19 and substitute the following:

19(1) Except in construction

(a) if a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months of the last year of the collective agreement,

(b) if a collective agreement is in force for a term of 3 years or more, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months of the third year of the agreement and thereafter in the seventh and eighth months in each year of the collective agreement or any continuation.

(2) In construction

(a) if a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in July and August of the last year of the collective agreement,

(b) if a collective agreement is in force for a term of 3 years or more, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in July and August of the third year of the collective agreement and thereafter in July and August of each year of the collective agreement or any continuation.

(3) Despite subsections (1) and (2), an application for certification may not be made within 22 months of a previous application under those subsections if the previous application resulted in a decision by the board on the merits of the application.

(4) Unless the board consents, a trade union is not permitted to make an application under this section during a strike or lockout.

B. Amend Section 1 by adding the following:

“construction” means construction, alteration, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines, dams, tunnels, bridges, railways, canals or other works, but does not include

- (a) supplying, shipping or otherwise transporting supplies and materials or other products to or delivery at a construction project, or
- (b) services directly or indirectly related to servicing and maintenance of the premises;

Sectoral or Multi-Employer Certification

Parties tend to conflate the concepts of multi-employer certification and multi-employer bargaining.

Unions generally support both broader based sectoral or multi-employer certification and bargaining. Their concern is that, absent such structures, sectors with the lowest union density, which are often comprised of the most vulnerable workers, are effectively denied access to collective bargaining.

Employers oppose multi-employer certification as being both impractical and unworkable because it could combine individual workplaces of competitor employers with no bargaining history in the same bargaining unit. Often, they are small businesses or contractors, with small margins providing services to much larger companies. If they are unable to meet their contractual terms, including costs, they risk losing their contracts.

Representatives of the franchise sector were emphatic a sectoral approach to certification and bargaining would fundamentally undermine the viability of the franchise model with significant economic implications for investment in B.C.

The majority of the 1992 Panel proposed sectoral certification for sectors of low union density, within geographic areas where employees perform similar work for similar businesses; for example, employees working in fast food outlets in Burnaby, B.C. That model was not adopted in the 1992 *Code* amendments. Despite ongoing discussions over the years regarding possible innovations in labour legislation, there are few North American examples of mandatory multi-employer certification regimes. The *Ontario Report's* recommendation for sectoral certification and bargaining in the franchise sector was not adopted.

While we recognize the problems and need for innovation, we did not receive sufficient information or analysis to make concrete recommendations for sectoral certification. This issue should be examined in more depth, perhaps by a single issue commission.

Successor Unions and Collective Agreements

Under Section 19 of the *Code*, a successful raiding union inherits the terms and conditions negotiated by the predecessor union for the duration of the term of the collective agreement. This is not consistent with other Canadian jurisdictions. In Ontario and Quebec, the collective agreement ceases to operate following a successful raid. In Alberta, Newfoundland and Labrador the collective agreement can be terminated by the successor union providing the employer with a prescribed period of notice. In Canada, following a successful raid the successor union may give notice to commence bargaining. In Manitoba and New Brunswick a collective agreement may be terminated by the successor providing notice and with the consent of the board.

The panel heard concerns that successor unions may inherit substandard collective agreements with long durations. However, parties often negotiate longer term collective agreements for reasons of stability and certainty and employers rely on those terms to make bids or capital investment and spending decisions (for example project labour agreements), which could be significantly impacted if the collective agreement could be re-opened following a successful raid. It is difficult to organize sectors unions may negotiate basic agreements as a first step in those sectors.

A successor union should be able to apply to the Board to have a collective agreement re-opened and the Board should have discretion to grant such relief in extra-ordinary circumstances having regard to its Section 2 duties. This would permit the exercise of this discretion where, for example, terms of the collective agreements are clearly inferior to the norm in the sector.

Recommendation No. 11

Amend section 27(1) by adding the following:

(d) despite subsection (1) (c), if there is a change in representation pursuant to section 19 and there are two or more years remaining in the term of the collective agreement, the trade union may serve the employer with three months' notice of its desire to terminate the collective agreement and apply to the board to terminate the collective agreement. The board may declare the collective agreement terminated or make other orders and determinations as the board considers appropriate. If the board grants the request to terminate the collective agreement all provisions of this Code apply to the negotiation of the collective agreement.

Successorship

The *Code* (Section 35) provides that collective bargaining rights and collective agreement obligations are assumed by a successor employer where a business or a part of it is sold, leased, transferred or otherwise disposed of. Successorship provisions have been given a full and liberal interpretation by labour boards providing there is a continuity of the business transferred.⁴⁴ Successorship does not apply to contracting out or the re-tendering of contracts.

Issues relating to successorship in contract re-tendering, particularly in the contract services sector, began to be recognized in the mid- 1990s. In 1997, the B.C. government required successorship recognition in its contracts for services for ministries, agencies, boards, commissions and the B.C. Building Corporation. In 1998, the government proposed amending the *Code* to extend successorship protection to contract services. Employers opposed this legislation and unions criticized its narrow scope. The legislation was ultimately withdrawn.

Several Canadian jurisdictions have enacted successorship provisions dealing with contracting out and contract re-tendering. Nova Scotia authorizes a successorship declaration where an employer contracts out or agrees to transfer bargaining unit work in order to defeat or undermine collective bargaining rights or avoid collective agreement obligations. For many years (but not currently), Saskatchewan extended successorship to building cleaning, food services and security services provided in a building owned by the province or municipal government or in a hospital, university or other public institution. The *Canada Labour Code*, RSC 1985, c. L-2 provides limited protection for employee remuneration when contracts are re-

tendered in security and other designated services. Ontario recently re-enacted successor rights when contracts are tendered and re-tendered in the building cleaning, food services and homecare sectors with provision for extension by order in council to other service providers that, directly or indirectly, receive public funds.

When successorship legislation was originally enacted in B.C., contract re-tendering was not as prevalent as it is today. When contracts are re-tendered, often the same workforce continues to provide the same services to the same customers or clients, with the same working conditions, at the same location, using the same equipment. The existing collective agreement ends, the employees are required to re-apply for their jobs, the union is required to organize the workforce and a new collective agreement must be negotiated.

The existing service delivery model in health care is premised on contracting and sub-contracting of food services, housekeeping, building services, security and non-clinical health services. In 2002, the government enacted the *Health and Social Services Delivery Improvement Act*, SBC 2002, c 2 which expressly excludes service providers contracting with a health care employer from the *Code's* successorship provisions (Section 6(5)). The *Health Sector Partnerships Agreement Act*, SBC 2003, c. 93 was enacted around the same time. The combined effect of those acts excludes both the *Code's* successorship provisions and collective agreement restrictions on contracting out. In 2007 the Supreme Court of Canada found portions of the *Health and Social Services Delivery Improvement Act* to be unconstitutional: *Health Services – Facilities Subsector Bargaining Association v. British Columbia* 2007, SCC 7. However, Section 6 (5) remains in effect.

During the public consultation process, we heard a number of disturbing anecdotal stories of the effects of contract re-tendering in health care. The panel was advised this has directly impacted more than 10,000 health and seniors' care workers, most of whom are minority women. We heard examples of workers with 20 to 30 years of experience having their wages and benefits significantly reduced by contract re-tendering. One care aide related that although she had been employed under a collective agreement for many years, when the contract for services was re-tendered, she had to reapply for employment. She was then re-hired by the new contractor with a 50% reduction in wages and only her service with the new contractor was considered for seniority purposes.

It is evident contract re-tendering has caused a significant erosion of earnings, benefits and job security. This has resulted in employment precarity with negative impacts on long term and seniors' care. The Panel was advised of one seniors' facility that changed contractors six times. This disruption of services and continuity has profound implications for patient and seniors' care and their families.

In long-term care and seniors' care, facilities which were historically owned and operated by local B.C. companies have increasingly been acquired by large multi-national companies such as large global equity funds located off-shore. Although private, these facilities receive significant government funding. One was sold for a billion dollars to a company that is now controlled by a foreign government.

We heard similar stories of the effects of re-tendering on workers in other contracted services including building cleaning, security, food, and bus services. In many cities and municipalities, bus services are provided by contractors through a Request for Proposal (RFP). When the contracts are re-tendered, the collective agreement ends, employees are invited to a job fair to

re-apply for their jobs and are often hired at lower wages. The Union is required to re-organize and attempt to negotiate a new collective agreement.

The cost of labour is one of the most important competitive factors in all of these circumstances. The contract re-tendering issue is most pronounced in sectors with the greatest precarity. In our view it is no more socially desirable to allow cost savings through reducing labour costs and eliminating established collective bargaining rights by the re-tendering of contracts than it is in the sale or transfer of a business. Both require the protection of the successorship protections of the *Code*.

Employer organizations encouraged the Panel to take a conservative measured approach and cautioned that any extension of successorship should only be done “surgically”. They warned that while there may be a case for some extension in health care, any extension beyond that would be de-stabilizing for investment in B.C.

When successorship provisions were introduced there were considerable concerns regarding the economic impacts on business. However, businesses are now bought and sold regularly in B.C. without any discernable negative implications.

We support a measured approach that addresses the problem in an incremental sustainable manner. Successorship protection should be extended to re-tendering of contracts for specified services. Since many contracts may be terminated on relatively short notice, in order to prevent contracts being cancelled to avoid the application of this change, it is imperative these changes are retroactive to the date of this Report.

Recommendation No. 12

A. Section 35 of the *Code* be amended by adding the following subsections:

(1.1) This section applies if a contract for services for

(a) building cleaning, security or bus transportation, or

(b) the health sector, including food, housekeeping, security, care aides, long-term or seniors’ care

is re-tendered and substantially similar services continue to be performed, in whole or in part, under the direction of another employer.

(1.2) Subsection (1.1) is effective August 31, 2018.

(1.3) Subsection (1.1) may be amended by order of the Lieutenant Governor in Council to provide for the addition of other sectors.

B. It follows that we recommend that those provisions in the *Health and Social Services Delivery Improvement Act* Section 6(5) and the *Health Sector Partnerships Agreement Act* Sections 4(4) and 5(5) which are inconsistent with this recommendation be repealed.

Successorship Issues in the Forestry Sector

Since the last *Code* review there have been massive changes in the BC coastal forest industry, due to provincial legislation and collective agreement amendments, which have significantly impacted forestry workers. Historically, the industry was characterized by large companies which controlled the entire production chain from harvesting the forests to finishing lumber in mills. Now, the industry is fractured with most logging employees working for contractors, rather than for the licence holders.

The changes are a result of a number factors. The provincial government enacted significant tenure reform and enabled forest tenure transfers. Private lands were removed from tree farm licences. Contractors lost their replaceable contracts (Bill 13) when legislation enabled those rights to be extinguished by the licence holders. Annual Allowable Cuts on tree farm licences were reduced to create BC Timber Sales and community forest licences, and to resolve First Nations' claims.

Another significant change is the increase in contracting out. This is largely due to the Woodlands Letter of Understanding, imposed pursuant to the *Coastal Forest Industry Dispute Settlement Act*, SBC, 2003, c. 103, which permits entire operations to be contracted out. The vast majority of logging is now performed by contractors who provide services to the licencees or land owners. These contractors have little control over their costs or working conditions. Even when those contractors have long term secure contracts (through Bill 13 or the Woodlands Letter of Understanding) they are required to bid on each block of timber as it becomes available. This competition results in what many consider a race to the bottom. We were told contractors have gone bankrupt or simply walked away from contracts.

We heard a number of concerns from union presenters regarding these changes, particularly with respect to the successorship and common employer provisions of the *Code*. We were told that as bargaining units become smaller they become more difficult to organize. Once organized, collective agreements are more difficult to negotiate, enforce, and administer. Since successorship only applies to the sale of the business, the transfer of cutting rights is not captured by Section 35 and the employees' collective bargaining rights are not protected. However, cutting rights are the primary asset of a logging business. Forestry has become a precarious industry, much like parts of health care, where logging contracts are re-tendered with adverse impacts on the workforce. The workers continue to log the same land, often with the same equipment, but without their collective agreement rights.

Collective bargaining and labour relations have also changed significantly in the forest industry. For many years Forest Industrial Relations ("FIR") represented all the major employers and many contractors. All of the major companies de-accredited from FIR resulting in fragmented collective bargaining with obvious inherent problems.

Unfortunately, we did not have the benefit of hearing from any forestry companies or experts. Accordingly, it is clear further consultation, study and analysis is required. This should be accomplished through an industrial inquiry commission.

Recommendation No. 13

An industrial inquiry commission should be appointed pursuant to Section 79 of the *Code* to review the forest industry.

Partial Dissent of Sandra Banister, Q.C.

While I agree an industry inquiry commission is required, for the foregoing reasons, I would extend successorship protection to the re-tendering of contracts in the logging sector.

Part 4 - Collective Bargaining Procedures

Statutory Freeze of Terms and Conditions after Certification

Section 45 (1) (b) provides an employer cannot alter rates of pay or other terms and conditions of employment for four months following certification or until a collective agreement is executed, whichever occurs first. This “statutory freeze” does not extend to measures that would reasonably be expected to change, such as annual salary increments previously paid, scheduled business closures or seasonal layoffs. This provision is often characterized as “business as usual.”

A number of unions stated that the current four month freeze following a certification is insufficient to negotiate a first collective agreement.

All Canadian jurisdictions have statutory freeze provisions with a range of time-frames. Ontario, Canada and Quebec impose a freeze from the date of an application for certification until strike/lockout or a first collective agreement has been concluded. In Nova Scotia, a freeze is imposed from the date notice to commence collective bargaining is provided until a collective agreement is concluded or seven days following a report of a conciliation officer. Saskatchewan imposes a freeze from the date of an application for certification until collective bargaining has occurred. Alberta and Manitoba impose a freeze for 90 days following the granting of a certification.

The current four month freeze period under Section 45 (1)(b)(i) of the *Code*, which was intended to reflect a reasonable time for parties to negotiate a first collective agreement, is insufficient. The 1998 Section 3 Committee recommended the freeze period reflect the average amount of time required to negotiate a first collective agreement, which they concluded was eight months. In our view, 12 months is a more reasonable amount of time to establish a relationship and to bargain a first collective agreement. In addition, if an application has been made under Section 55, the freeze should continue until the process has been completed.

It follows revocation under Section 33 should not be permitted for 12 months to permit sufficient time to conclude a first collective agreement.

Recommendation No. 14

A. Amend Section 45 (1)(b)(i) as follows:

“12 months after the board certifies the trade union as the bargaining agent for the unit, or until an application under Section 55, made within the 12 months, has concluded, whichever occurs last, or”

B. For consistency, amend Section 33 (3)(a) and (b) by striking out “10 months” and substituting “12 months”.

Filing Collective Agreements with the Board

Section 51 of the *Code* requires all collective agreements be filed with the Board. While that provision is mandatory many parties do not comply and there is no enforcement mechanism.

The public consultation process confirmed broad agreement that Section 51 should be augmented to ensure compliance. The filing of collective agreements serves several desirable labour relations purposes. It ensures that employees can readily access collective agreements that govern the terms and conditions of their employment and provides public access to collective agreements to inform collective bargaining.

Section 51 is a substantive provision and there should be real consequences for non-compliance. Absent good and valid reasons, parties to a collective agreement who fail to comply should not be able to rely on the collective agreement for *Code* purposes.

Recommendation No. 15

Amend Section 51 to add the following:

(2) This requirement includes any substantive ancillary agreements amending rates of pay, hours of work or benefits and any continuation to the collective agreement or to the substantive ancillary agreements.

(3) If a copy of the collective agreement, including any substantive ancillary agreements, and any continuation, has not been filed with the board, the board may decline to consider it in any proceedings under this *Code*.

Facilitating the Evolution of Co-operative Labour Relations

Joint Consultation

Every previous *Code* review has emphasized the importance of developing more co-operative labour relations approaches to encourage flexibility and adaptability of labour relations. Although Sections 2, 53 and 54 advance that purpose, much more should be done to facilitate this co-operation.

The most viable route to developing co-operative mechanisms is an evolutionary incremental process with a long-term focus. Both the Ministry and the Board can play important supportive and facilitative roles.

The Board could also play broader facilitation and mediation roles similar to the Canadian and United States Mediation and Conciliation Services. Those organizations provide a range of services, including education in alternative dispute resolution, training in problem-solving and mutual gains bargaining. The Board could also offer a range of courses, workshops, conferences and other facilitative services which would contribute to the evolution of more co-operative labour relations and a furtherance of its Section 2 *Code* duties.

The 1992 Report recommended mechanisms to assist the development of more co-operative labour relations by providing resources to assist parties with training, problem-solving and mutual gains bargaining. Section 53 of the *Code*, which was part of that initiative, requires a joint consultative or labour-management committee in every collective agreement to promote the co-operative resolution of workplace issues and productivity and to respond and adapt to changes in the economy. Since Section 53 (5) requires a joint request for the appointment of a facilitator, the process is not often available to those in most need of assistance.

Recommendation No. 16

Amend Section 53 (5) to allow the appointment of a Board facilitator at the request of either party.

Adjustment Plans

Section 54 requires an employer intending to introduce a change that will impact a significant number of employees in the bargaining unit to provide 60 days notice to the union to allow discussion of an adjustment plan. There is currently no mechanism to deal with a failure to conclude such a plan. Some unions proposed that Section 54 should allow access to interest arbitration if the parties are unable to negotiate an adjustment plan.

We accept the current process is inadequate, but prefer that resources be provided to facilitate the parties reaching their own agreement. This is more consistent with co-operative labour relations.

Section 54 should be amended to allow either party to apply to the Board for the appointment of a mediator if an adjustment plan is not concluded. It should also provide that if mediation is unsuccessful, the mediator may issue a report with recommendations for the terms of an adjustment plan.

Recommendation No. 17

Amend Section 54 by adding:

(2.1) If, after meeting in accordance with subsection (1), the parties have not agreed to an adjustment plan, either party may refer any outstanding issues to the associate chair of the Mediation Division for the appointment of a mediator to assist the parties to conclude an adjustment plan.

(2.2) If, after mediation, the parties have not agreed to an adjustment plan, the mediator may make recommendations for the terms of an adjustment plan.

(2.3) The parties must provide the information the mediator requests concerning the change, its impacts and the parties' efforts to develop an adjustment plan.

First Collective Agreements

The 1992 Report recommended mediation to assist the conclusion of a first collective agreement. Section 55 permits either party to apply for mediation assistance. First collective

agreements are often more difficult to negotiate given the certification process may have been contentious, unfair labour practices may have occurred or the parties have not developed a working relationship.

Currently, a strike vote is a prerequisite to obtain the assistance of a Board mediator. This does not promote the development of a productive collective bargaining relationship and can have particularly adverse consequences in precarious work situations. Significantly, where there is an established collective bargaining relationship, a strike vote is not required to access mediation under Section 74.

In their recent amendments, both Ontario and Alberta removed the strike vote requirement to access first collective agreement mediation/arbitration.

The requirement for a strike vote to access mediation assistance should be removed from Section 55. If the Board concludes the issue should be resolved by strike/lockout, a strike vote could occur at that point. Further, where the Board has imposed a remedial certification and mediated negotiations are unsuccessful, the parties' conduct prior to and following certification may be important considerations in determining the next step in the process.

Recommendation No. 18

- A. Delete Section 55 (1)(b) which requires the majority of employees to have voted in favour of a strike in order to access the Board's mediation assistance.
- B. Delete Sections 55 (7) and (8) and substitute the following:
 - (7) If a remedial certification was granted, the mediator may consider the parties' conduct, prior to and following certification, when determining the recommended process under subsection 6(b).
 - (8) If the parties do not accept the mediator's recommended terms of settlement or if a first collective agreement is not concluded within 20 days of the report under subsection (6), the associate chair may direct a method set out in subsection (6) (b) for resolving the dispute and, if a remedial certification was granted, when making that direction may consider the parties' conduct, prior to and following certification.
 - (9) If the associate chair directs a method set out in subsection (6) (b) (i) or (ii), the parties must refrain from or cease any strike or lockout activity, and the terms of the collective agreement recommended or concluded under that subsection are binding on the parties.

Sectoral Collective Bargaining

Some unions suggested the *Code* should provide for multi-employer collective bargaining. There are a number of sectors or industries in B.C. that have broad based bargaining including the public service, education, health, social services, movie and television production and construction.

Broad based bargaining in B.C. is mostly the result of an evolutionary and incremental process. In the private sector, apart from construction, it was voluntary. Bargaining in the public service

was province wide from its inception. In 1994, following the recommendations of the Commission of Inquiry into the Public Service and the Public Sector (the “Korbin Commission”), legislation was enacted rationalizing and centralizing existing broadly based bargaining structures in health care, social services, education and crown corporations and agencies.

Since the 1990s, bargaining structures in the private sector have fragmented while the public sector was centralized.

The *Code* provides some mechanisms for the development of broader based bargaining structures. Section 41 enables the rationalization of existing bargaining structures through the creation of a council of unions. Sections 43 and 44 of the *Code* permit employers to voluntarily form accredited employers organizations.

We did not receive sufficient information to make recommendations for *Code* amendments in this area. The issue of broader based bargaining structures requires further examination and analysis through a process like the *Korbin Commission* or under Section 80 of the *Code*. We therefore make no specific recommendations for sectoral collective bargaining.

Recommendation No. 19

Sectoral multi-employer collective bargaining should be examined by industry councils under Section 80 and, in appropriate circumstances, by an industrial inquiry commission.

Part 5 - Strikes, Lockouts and Picketing

Secondary Picketing and Replacement Workers

A number of unions proposed the elimination of restrictions on secondary picketing in Section 65 in light of the Supreme Court of Canada decisions. Unions also supported retaining the restrictions on an employer’s ability to utilize replacement workers during a labour dispute.

The restrictions on both secondary picketing and the use of replacement workers during a labour dispute were proposed by the 1992 Report which recommended the *Code* should restrict the picketing of a secondary location provided the ability to use replacement workers was also restricted. Those corresponding restrictions were intended to provide balance and enhance industrial stability. We agree that is an appropriate balance.

There has been a significant decline in person days lost due to labour disputes in B.C. since the mid -1990s. Employers maintain the *Code* has been an important factor in this decline. While additional factors play a role, we agree that Sections 65 and 68 have contributed to this decline. The restrictions on secondary picketing and the use of replacement workers were intended to be a package. In our view, the countervailing restrictions on secondary picketing and use of replacement workers during a labour dispute have worked well and should be maintained.

Definition of Picketing

The definition of picketing in the *Code* was struck down by the Supreme Court of Canada in *United Food and Commercial Workers, Local 1518 v Kmart Canada Ltd.* 1999 2 SCR 1083 (“Kmart”). The Court ruled consumer leafleting constitutes an exercise of the freedom of

expression protected under the *Charter*. As the *Code* definition of picketing encompassed consumer leafleting it was overly broad and unconstitutional. Although the Court gave the legislature six months to address the definition, it has not done so. As the *Code* regulates picketing it should define it.

Recommendation No. 20

Amend Section 1 of the Code to add the following definition of picketing:

“picket” or “picketing” means attending at or near a person’s place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to

- (a) enter that place of business, operations or employment,
- (b) deal in or handle that person’s products, or
- (c) do business with that person,

and a similar act at such a place that has an equivalent purpose, but does not include lawful consumer leafleting that does not unduly impede access or egress or prevent employees working at or from the site.

Part 6 - Essential Services

Education

In B.C. the policy underlying essential services legislation is to provide for “controlled strikes”, balancing the right to strike with the preservation of the health, safety, and welfare of the citizens. In 1974, the *Code* was amended to include the first essential services legislation which regulated strikes by firefighters, police and hospital workers.

In 1988, essential services were redefined to include a threat to the economy of the province and the provision of educational services.

The 1992 Code amendments adopted the 1992 Report recommendations that education be removed as an essential service. The Board subsequently concluded that some elements of educational services could be included in the term “welfare”, for example, final examinations for grade 12 students.⁴⁵ In 2002, Section 72 was amended to expressly refer to the provision of educational programs to students and children.

In 2015, the Supreme Court of Canada concluded the right to strike is constitutionally protected and limited the permissible scope of essential services to a “*clear and imminent threat to the life, personal safety or health of the whole or part of the population*”: *Saskatchewan Federation of Labour* 2015 SCC 4 at para 84.

B.C. is the only Canadian jurisdiction to include education as an essential service.

The reference to educational programs in Section 72 is vague and overly broad. It requires the Board to determine whether a disruption to kindergarten programs should be treated the same

as programs for grade 12 students. Restricting essential services to prevent immediate and serious danger to the health, safety or welfare of B.C. residents is more consistent with the nature and purposes of essential service designations; legislation in other Canadian jurisdictions; and the decisions of the Supreme Court of Canada. Education services that may be truly essential (such as grade 12 examinations) would continue to be captured by the Board's interpretation of the term "welfare".

Recommendation No. 21

Delete Sections 72 (1)(a)(ii), 72 (2.1) and all references to 72 (2.1) in Subsections (3), (5)(a), (6) and (7).

Part 7 - Mediation and Dispute Resolution

Industry advisory councils

There is confusion about the role and practical utility of industry advisory councils.

Section 80 of the *Code*, enacted in 1992, enables the Minister of Labour to establish industry advisory councils to provide advice to improve collective bargaining and procedures for settling disputes. Although this provision has not been utilized, it offers considerable potential for the evolution of more co-operative labour relations.

One means of accomplishing this is to change the focus from providing advice to the Minister to identifying and addressing industry specific issues.

The Board, as the only Canadian labour tribunal to encompass both mediation and adjudication functions, is well positioned to facilitate the creation of industry councils by identifying sectors with potential for developing more co-operative labour relations and assisting parties to initiate industry councils.

Recommendation No. 22

Repeal Section 80 and substitute the following:

The Minister may, on application by an employer or trade union, on motion of the board, or on his or her own motion, direct the board to assist the parties to establish industry councils which may

- (a) recommend measures to achieve more efficient collective bargaining and procedures for settling disputes,
- (b) identify industry or sector issues, skills and training needs, health and safety related issues, competitive and productivity challenges,
- (c) develop labour market information and marketing initiatives, and
- (d) make any recommendations necessary to advance the industry or sector.

Part 8 - Arbitration Procedures

Delay in the scheduling of hearings and the provision of arbitration awards, both generally and in the context of Section 104, were concerns frequently expressed during the public consultations.

Mr. Justice Warren Winkler, the former Chief Justice of the Ontario Court of Appeal and a widely respected labour relations expert, reports arbitrations were initially non-adversarial, hearing dates were commonly set within six to eight weeks, hearings were often completed within one-half day and short, six to eight page decisions, were rendered quickly, often within two weeks.⁴⁶

Arbitrations are no longer expeditious, efficient or inexpensive. The problem begins with the grievance process which frequently does not function effectively. Parties are often positional and fail to exchange the information that facilitates settlement. Unfortunately, in many cases, the process has simply become a series of perfunctory steps before referral to arbitration.

However, there are many examples of effective dispute resolution procedures which we encourage parties to examine. The Health Employers Association and B.C Nurses Union have developed an expedited arbitration process with a registrar who engages in active case management.

There are a number of factors likely contributing to delay in the arbitration system. Labour arbitration has become increasingly complex, largely as a result of the expanded jurisdiction of arbitrators to decide matters previously within the purview of the courts: *Webber v Ontario Hydro* (1995) 2 S.C.R. 929 SCC and *Parry Sound (District) Social Services Administration Board v O.P.S.E.U., Local 324* 2003 SCC 42. This has been accompanied by a shift from a non-adversarial, solution focused system, to litigation. Arbitrations today frequently require complex medical or other expert evidence, with attendant privacy issues. More complicated pre-hearing issues, discovery, disclosure and pre-hearing motions all contribute to delay. The focus on winning cases has resulted in an increased importance being placed on arbitrator selection, creating a smaller pool of acceptable arbitrators. This, together with schedules of arbitrators, counsel, experts, and the parties all contribute to backlogs, delays, and growing frustration with the system.

Some parties proposed amending the *Code* to require the arbitration process be completed within six months of a referral to arbitration. While that has some initial appeal, the problems and solutions are more complex. Arbitration is a private process largely controlled by the parties. We encourage parties to make increased use of expedited arbitrations with short time frames, restricted evidence and documents, limited legal arguments and brief decisions.

Engaging mediation as soon as possible after a referral to arbitration would avoid last minute settlements, preparation costs, and free up arbitrators so they are available for other matters. Section 87 of the *Code*, which provides for a settlement officer at the request of either party, is little known and underutilized. This resource needs to be publicized and should be available, following the completion of the grievance procedure, at any time throughout the process.

Support was also expressed for aggressive case management. Our recommendation incorporates this proposal at an early stage.

Recommendation No. 23

- A. Amend Section 87 to delete the requirement the request for a settlement officer be made “within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration”.
- B. Amend Section 89 by adding the following:
 - (2) The arbitration board must within 30 days of appointment conduct a case management conference to schedule the timely exchange of particulars and reliance documents, schedule hearings date(s) and encourage early mediation.

Expedited Arbitration

The 1992 Report recommended an expedited arbitration process under the *Code*, administered by the Collective Agreement Arbitration Bureau (“CAAB”). The arbitration hearing is supposed to commence within 28 days with a decision provided within 21 days of the completion of the hearing. Section 104 also provides for assistance of a Board settlement officer by mutual agreement, prior to the hearing.

The labour relations community is well aware that Section 104 is not expeditious or working as intended. For a variety of reasons, the time limits are not realistic. Our recommendations propose more realistic time limits and procedures to ensure a more expeditious process.

Many of the presenters expressed the view Section 104 decisions should not be precedential and should not be available for collective agreement interpretation issues. We are concerned that approach would limit the utility of Section 104 by excluding a wide range of grievances. At the same time, we recognize some disputes are not amenable to resolution through our recommended expedited process.

The Board’s records confirm that approximately 75% of all Section 104 applications are resolved without the need for arbitration. Many favourable comments were made about the assistance provided by the Board settlement officers under Sections 104. Some stated this is the main reason they file Section 104 applications.

Our extensive recommendations, which are summarized below, are detailed in our attached proposed code amendment act.

Recommendation No. 24

- A. Amend Section 104 to provide that applications must be made within 15 days of completion of the grievance procedure. Within 7 days of the appointment of the arbitrator, the arbitrator shall conduct a case management conference to schedule the timely exchange of particulars and reliance documents, schedule hearing dates and explore the viability of early mediation. The hearing must be completed within 90 days of the date of a referral to arbitration. The arbitrator must render a brief decision, not to exceed 7 pages, within 30 days of the date of the completion of the hearing.
- B. To enable the arbitrator to expedite the hearing and conclude it within the 90 day time limit, provide the arbitrator additional powers to order:

- i) the hearing date;
 - ii) a brief written summary of each party's position be exchanged in advance;
 - iii) an agreed statement of facts be prepared and/or limited *viva voce* evidence;
 - iv) a fixed time period for the presentation of any evidence and argument;
 - v) limited reference to legal or other authorities; and,
 - vi) any other step or procedure designed to facilitate an expedited decision in the proceeding.
- C. Section 104 should also be amended to provide either party may apply to the Director of CAAB for the appointment of a settlement officer to assist the parties to settle the dispute.

Review of Arbitration Awards

The *Code* establishes two avenues for the appeal of arbitration awards. B.C. is unique in providing the Board with jurisdiction to review arbitration awards. Under Section 99, the Board has jurisdiction to review arbitration awards where there is an alleged denial of a fair hearing or the award is inconsistent with *Code* principles. Section 100 provides for review by the B.C. Court of Appeal on matters of general law.

This bifurcation was the legislature's attempt to limit court intervention in arbitration matters. The legislature divided jurisdiction between the Board and the B.C. Court of Appeal commensurate with their areas of expertise. The Court of Appeal has interpreted its jurisdiction very narrowly. In fact, the Court of Appeal has concluded there are few cases engaging the collective agreement that are not captured by Section 99 of the *Code* even when the interpretation and application of other statutes is involved.⁴⁷

Parties expressed frustration with this bifurcation which often obliges parties to file applications in both forums adding expense, delay and uncertainty. While there is much to recommend elimination of Section 100, the Court's inherent jurisdiction cannot be completely eliminated. However, in order to avoid the necessity of dual appeals with the attendant expense and delay, we propose amending Section 100 to codify the rare and exceptional circumstances that will engage Section 100.

A narrow scope of review under 100 means the Board will now be reviewing arbitral decisions involving issues of general law. This raises the question of the standard of review of those arbitration decisions. The Board's policy of deference to arbitrators' decisions is due to the private nature of arbitrations and acknowledgment of the expertise of arbitrators to interpret and apply collective agreements. Now, due to a series of judicial decisions, arbitrators are required to interpret statutes of general applications which are beyond their normal area of expertise. Applying the genuine effort standard of review to such decisions is problematic. This issue requires further consideration and input.

Recommendation No. 25

Amend Section 100 as follows:

On application by a party affected by a decision or award of an arbitration board, the Court of Appeal may review the decision or award if the basis of the decision or award is a matter or

issue of the general law unrelated to the collective agreement, the labour relations context, or related factual determinations and not included in Section 99 (1).

Standard for Review of Board Decisions

Concerns were raised regarding the patently unreasonable standard for judicial review of Board decisions mandated by the *Administrative Tribunals Act* SCB 2004, C. 45 (“ATA”).

The reasonableness standard for judicial review of decisions of administrative tribunals has been endorsed by the Supreme Court of Canada and is applicable in all other Canadian jurisdictions: *Dunsmuir v. New Brunswick* 2008 SCC 9, (2008) 1 SCR 190. We agree the reasonableness standard is appropriate and, but for the ATA, Board decisions would be reviewed on that standard.

An amendment to the *Code*, deleting Section 115.1, to require the reasonableness standard to apply to the judicial review of Board decisions would mean that decisions of the Board, would be reviewed on a less deferential standard than all other administrative tribunals in B.C. Such an anomaly is not appropriate.

Recommendation No. 26

To be consistent with all other Canadian jurisdictions, consideration should be given to amending the ATA to delete the patently unreasonable standard of judicial review.

Part 9 – Labour Relations Board

A common theme expressed in the consultation process is that there is a lack of basic information regarding rights and obligations under *Code*. For example, many unions and employers are either unaware of or fail to fully utilize the *Code*’s dispute resolution mechanisms. It is uncontroversial that the broad public interest is served by ensuring information regarding *Code* rights and obligations is easily and publicly available.

The Labour Relations Act of Ontario now directs the Minister of Labour to prepare a poster containing specific information about the Act including rights and obligations arising under it, which is available on-line (Section 89.1). The Ontario approach has considerable merit and a similar approach should be adopted in B.C. Where practical, consideration should be given to making the poster available in languages reflecting the demographics of specific workplaces.

Recommendation No. 27

Amend the *Code* by adding the following:

Section 123(1) The Board prepare a poster, available on-line, containing the following information relating to

- a) the rights of employees
 - (i) to join a union and participate in its lawful activities including discussing and engaging in organizing during non-working time,

- (ii) to apply for certification, to sign applications for membership in a union, to vote freely in a certification vote, to participate in collective bargaining, and
- (iii) to engage in lawful actions under the *Code*,

b) the obligations of employers or persons acting on their behalf

- (i) to recognize a certified union as the exclusive bargaining agent for all employees in the bargaining unit,
- (ii) not to interfere with the formation, selection or administration of the union,
- (iii) not to refuse to employ or continue to employ an employee or discriminate against an employee because that employee is a member of a union or is participating in organizing activities,
- (iv) not to threaten to or impose any penalty or reward on an employee to compel or induce them from participating in organizing,
- (v) not to fire, demote or transfer employees or take any adverse action because they have joined a union or taken part in organizing activities,
- (vi) not to threaten to close a business or otherwise retaliate against employees for engaging in organizing activities, and
- (vii) to bargain in good faith with the Union following certification.

c) the obligations of a union or persons acting on behalf of a union not to threaten, intimidate or coerce employees or compel or induce employees to become or refrain from becoming a union member.

d) contact information for the Board including its website and telephone number.

(2) The Board may require an employer to post the poster in a conspicuous location or locations in the workplace.

Revocation of Bargaining Rights-Partial Decertification of a Bargaining Unit

Section 142 of the *Code* gives the Board the authority to vary or cancel a certification. Although the *Code* does not expressly provide for partial decertification of a bargaining unit, the Board has a long-standing policy of entertaining applications for decertification of a portion of a bargaining unit pursuant to its discretion to vary or cancel a certification under Section 142. There are no express factors governing the exercise of that discretion.

A number of unions expressed concern that the Board's policy lacks clarity and proposed the *Code* be amended to preclude partial decertification. Alternatively, they said the *Code* should be amended to expressly limit the circumstances where a partial decertification is permissible. Finally, if partial decertification is to remain a matter of Board policy, those unions say those applications should be treated expeditiously and in the same manner as applications for decertification under Section 33 of the *Code*.

Employer groups favour leaving the issue of partial decertification to the Board to deal with through its policy making function.

In 1987, the Board issued a policy decision which set out the factors to be considered in determining whether to grant partial decertifications in order to ensure consistency in

outcomes.⁴⁸ That policy was modified by the Board in 2001.⁴⁹ The Board concluded that its building block approach to certification creates large, diverse bargaining units which would be virtually impossible to de-certify as a whole. The Board also determined that partial de-certification under Section 142 would be a limited exception to its majoritarian approach.⁵⁰ Accordingly, the Board's policy under Section 142 on partial decertification is interrelated to its building block approach to certification.

We accept that incremental partial decertifications can have significant negative impacts on the benefits of the remaining employees. During the public consultation process one individual related the devastating impact of decertification on his pension.

However, the *White Spot* decision was a policy decision by a very unusual seven person panel made up of the Board executive, vice-chairs and members, which heard submissions from a broad cross-section of the labour relations community. We are not persuaded that *Code* amendments are necessary as the Board can deal with this issue through policy development.

Part 10 - Miscellaneous

Fines

The Board has limited authority to impose fines for refusal to comply with Board orders of \$1000 for individuals and \$10,000 for organizations (Section 158). Alberta, Manitoba, Ontario and Canada, provide for greater fines for breaches. Ontario and Alberta recently increased fines to \$5,000.00 for individuals and \$100,000.00 for organizations.

Some proposed expanding the Board's remedial authority to permit the issuance of punitive fines for breaches of specific *Code* provisions such as unfair labour practices. No Canadian jurisdictions have authority to impose punitive fines because that would not be conducive to good labour relations. Labour board remedies should be compensatory and restorative, not punitive.⁵¹ We agree. However, the fines the Board may issue for breach of its orders should be increased to be an appropriate deterrent against non-compliance.

Recommendation No. 28

Amend Section 158 to authorize the Board to impose a fine of up to \$5,000.00 for individuals and \$50,000.00 for companies and unions for failure to comply with a Board order.

Other Issues

Construction Industry

BCBCBTU and BCYT proposed a separate Section 3 review process be undertaken and Section 41.1 (2) of the *Code* be eliminated. Construction Labour Relations Association of B.C. ("CLR") raised concerns relating to the industry Jurisdictional Assignment Plan ("JAPlan") and the sharing of the craft of carpentry between two unions.

After the public consultation process had finished, some building trades unions suggested a potential conflict of interest because one of the members of the Review Panel represents the CLR. We unanimously reject that suggestion. Our mandate is to provide recommendations to

the Minister regarding the *Code*. We have no adjudicative role. Our appointment was based on our experience as labour relations practitioners with the expectation that we would continue our respective labour relations practices during the review process. We are satisfied there is no conflict of interest.

BCBCBTU was established by the Board in 1978 under Section 41 of the *Code* in recognition of the fact “...that building construction is a single, integrated industry, and collective bargaining relationships are a reflection of that fact.”⁵² This fact has not changed. As noted in the Board’s 2012 Report⁵³, it was intended to function in a reasonably cohesive, unitary manner to achieve more rational collective bargaining. The Board has played an active role and has developed expertise in the construction industry. Despite a difficult bargaining relationship, it is notable there has not been a strike or lockout in the industry for more than 30 years. A return to voluntary participation in fragmented craft bargaining structures would not be conducive to stable labour relations. We do not recommend the elimination of Section 41.1(2).

The first issue raised by CLR is stability related to the sharing of the craft of carpentry, a matter reviewed extensively in the Board’s 2012 report. The sharing of the craft of carpentry was permitted by the Board, but was expected to be temporary. CLR’s legitimate stability concerns can and should be dealt with by the Board’s continuing oversight of this unique sharing of a craft.

CLR also raises the issue of an inconsistency between the B.C. JAPlan and the Canadian Plan, which undermines the effectiveness of the B.C. Plan. The 2012 report identified the B.C. JAPlan as a major contributor to labour relations stability in the building trades sector of the construction industry. The Board is aware of the inconsistency between the two plans and consequential potential problems. It has also strongly endorsed the B.C. Plan. In our view, this inconsistency should be dealt with by the parties. If they fail to do so, the Board may intervene. Accordingly, we do not recommend a *Code* amendment.

The construction industry was extensively reviewed in 1992, 1998 and 2012.⁵⁴ Accordingly, a further review of the construction industry is not warranted at this time.

Definition of Trade Union

Two international unions raised a concern that collective agreements negotiated by international or national unions are not enforceable in B.C. because those entities are excluded from the *Code*’s definition of “trade union”.

This definition, which has been in place in B.C. since 1954, ensures a local or provincial union is able to negotiate a collective agreement responsive to local economic and market conditions. While national agreements provide some consistency and predictability for companies interested in investing in B.C., international or national unions can apply their agreements through their local affiliates.

We do not see a compelling reason to change the long-standing definition of “trade union” in the *Code*.

Resources for the Labour Relations Board

During the public consultative process, there was universal agreement the purposes of the *Code* can only be achieved if the Board is properly resourced.

The Board's Annual Reports demonstrate its funding was significantly reduced from \$7,728,000 in 2004 to \$4,175,000 in 2017; a 46% reduction without factoring in inflation. During this period, the Board's staffing has also been dramatically reduced. Clearly, the Board is underfunded and cannot meet its obligations under the *Code*.

This has resulted in serious challenges to the Board giving full effect to *Code* protections and rights. For example, the Board's computer system is an antiquated dos prompt that does not permit accurate tracking of cases, identification of trends or reporting. As the Board's resources are inadequate to meet its current responsibilities it will obviously be unable to give effect to our recommendations unless its funding is substantially increased.

The Board must have sufficient resources to ensure its adjudicative role functions efficiently and expeditiously. Our recommendations also require expanded public information and dispute resolution services. At a minimum this requires additional special investigation officers and mediators.

Recommendation No. 29

The Board's funding must be increased to enable it to meet its duties under the *Code*.

¹ *Canada Labour Code*, RSC 1985, C L-2, *Labour Relations Code*, RSA 2000, C L-1, *Labour Relations Act*, SO 1995, c1.

² For a full analysis see George Adams *Canadian Labour Law* (2d) Canada Law Book (1993).

³ For an in depth discussion see Paul Weiler *Reconcilable Differences: New Directions in Canadian Labour Law* Toronto: Carswell 1980.

⁴ In 1976, 37% of all women in Canada under the age of 15 were part of the workforce. By 2004 that had increased to 58%: Harry Arthurs, *Fairness at Work: Labour Standards for the 21st Century* Government of Canada (the “Canada Code Review”) at p. 19.

In B.C. women’s participation in the workforce increased from 37.9% in 1976 to 48.1% in 2017. Statistical information relating to B.C. is drawn from data and analysis is provided by the Ministry of Labour (“Ministry of Labour Data”).

⁵ Nationally, immigration accounted for 70% of current population growth while accounting for 20% of that growth in 1976: *Canada Code Review* at p.19.

⁶ Ministry of Labour Data. In 1976, 25% of the workforce were 15 to 24, 65% were 25 to 54 and 11% were over 55. By 2017, 14% were 15 to 24, 64% were 25 to 54 and 22% were over 55.

⁷ Ministry of Labour Data. In 1990, 38% of women and 41% of men in B.C. had a post-secondary certificate, diploma or degree. By 2016 that had increased to 65% for women and 60% for men.

⁸ *Ibid.*

⁹ The Changing Workplaces Review *Report of the Special Advisors*, Government of Ontario 2017 (the “Ontario Review”) Ch. 4.

¹⁰ L. Vosko, N. Zukewich, C. Copeland *Precarious Jobs: A New Typology of Employment* (October 2003) 4 Perspectives 16, 19.

¹¹ *Ibid.*

¹² Business Council of B.C. *Human Capital Law and Policy* Volume 7 Issue 2 June 2017 (“HCLP Vol 7”). There has been a significant increase in self-employed individuals without employees. 420,000 British Columbians are self-employed. That number has increased by 25% over the past 20 years and is most pronounced in the gig economy.

¹³ *HCLP Vol 7*. Since 1976, part-time work in B.C. has grown faster (3% annually) than full-time work (1.9% annually). Part-time work as a percentage of total employment grew from 15% in 1976 to 22% in 2017.

¹⁴ *Ibid.* Between 1997 and 2011, temporary jobs grew by an average of 3.4% a year while permanent jobs grew at 1.1% a year. A higher percentage of women are employed in temporary jobs.

¹⁵ T. Belliester & A. Elsheikhi, International Labour Office Working Paper No. 29 *The Future of Work: A Literature Review* March 2018 p. 18 (“The Future of Work”).

¹⁶ *Ibid* p. 20.

¹⁷ *The Future of Work* p.27.

¹⁸ Anil Verma *Labour Regulation and Jurisdictional Competitiveness, Investment and Business Formation: A Review of the Mechanisms and Evidence* Toronto Ontario, Ministry of Labour, 2016; the *Canada Code Review* at p. 32.

¹⁹ David Weil *The Fissured Workplace: Why Work Became So Bad for so Many and What can be Done to Improve it* Harvard University Press 2014 at p. 32.

²⁰ *Canada and the Changing Nature of Work* Policy Horizons Canada, May 2016, p.3.

²¹ Ministry of Labour Data.

²² *Ibid.*

²³ B.C. Labour Directory, 1991 – as quoted in the 1992 Report p. 8; Business Council of B.C. *Human Capital Law and Policy* Volume 6 issue 1 February 2016 (“HCLP Feb/16”).

²⁴ R. Marrisette, G. Schellenberg, A. Johnson *Diverging Trends in Unionization Perspectives* April 2005 Statistics Canada.

²⁵ *HCLP Feb/16.*

²⁶ Ministry of Labour Data.

²⁷ *Ibid.* The highest density in 2017 was in the public sector; 67.9% in public administration. 67.5% in education services, 62.7% in utilities and 58.6% in healthcare and social services.

²⁸ *Ibid.*

²⁹ *Ibid.* Density in accommodation and food services is 5.4%.

³⁰ Discover Skills B.C. *Service Sector*, Province of B.C.

³¹ *RMH Teleservices International Inc.* BCLRB No. B 188/2005; *Convergys Customer Management Canada Inc.* BCLRB No. B 62/2003.

³² Sara Slinn *No Right (to Organize) Without A Remedy: Evidence and Consequences of Failure to Provide Compensatory Remedies for Unfair Labour Practices in British Columbia* (2008) 53 McGill L.J. 687 at p. 703.

³³ Chris Riddell *Union Suppression and Certification Success* *Canadian Journal of Economics* 34 (2001) 396-410.

³⁴ *Slinn, supra* note 32 at 718-723.

³⁵ See for example, *Convergys Customer Management Canada* BCLRB No. B 111/2003 (Leave for reconsideration of BCLRB No. B62/2003) para 40, 90 Can 2RBR (2d) (BCLRB); *(Re) Delta Optimist* (1980) 2 Can LRBR 227 at p.247 (BCLRB).

³⁶ see for example, *Rainbow Mechanical Ltd. (Re)* BCLRB No. B277/2012 at para. 107-108, 118.

³⁷ See *Alberta Labour Relations Act* Section 16(8) and 17(1) (d)(i).

³⁸ *Wide Water Calgary Hotel v UFCW, Local 401* File no. GE-07613.

³⁹ Felice Martinello *Correlates of Certification Application Success in British Columbia, Saskatchewan and Manitoba Industrial Relations* (1996) pp 544-562; Susan Johnson *Card Check or Mandatory Recognition Vote? How the Type of Union Recognition Procedures Affects Union Certification Success* *The Economic Journal* 112 (479) p 344-361 (2002).

⁴⁰ Sara Slinn *An Analysis of the Effects on Parties' Unionization Decision of the Choice of Union Representation Procedure: The Strategic Dynamic Certification Model* (2005) 43 *Osgood Hall Law Journal* p. 407.

⁴¹ See for example, Terry Thomason and Susanne Pozzebon *Managerial Opposition to Union Certification in Quebec and Ontario* 1998 *Industrial Relations* 750.

⁴² *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982*(UK), 1982, c.11.

⁴³ See for example, *IHA (East Kootenay Regional Hospital)* BCLRB No. B 109/2013; 228 Can. LRBR (2d)1.

⁴⁴ George Adams *Canadian Labour Law* 1985 Canada Law Book pp. 414-415; *Lester Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 470* (1990) 3 SCR 644.

⁴⁵ *The Board of School Trustees of School District No. 54 (Bulkley Valley)* BCLRB No. B 147/93.

⁴⁶ Donald Wood Lectures *Labour Arbitration and Conflict Resolution: Back to our Roots* Queens University November 30, 2010.

⁴⁷ see for example, *Chilliwack School District No. 33 v. Chilliwack Teachers' Association* (2005), BCCA 411; *Taan Forest Ltd. v. USW, Local 1-1937* (2018) BCCA 322.

⁴⁸ *Westar Timber Ltd.* BCLRB No. B48/87, (1987) 14 Can. LRBR (NS) 360.

⁴⁹ *White Spot Ltd. v CAW, Local 3000* BCLRB No. B 16/2001.

⁵⁰ *Ibid* para 78, 87.

⁵¹ See for example, *Royal Oak Mines v. Canada (Labour Relations Board)* (1996) 1 SCR 369 at para 68, 133 D.L.R. (4th) 129.

⁵² *In the Matter of An Inquiry Regarding The Structure Of Bargaining By Building Trade Unions With Construction Labour Relations Association* BCLRB #6/78.

⁵³ *An Interim Report regarding a Section 41 Inquiry into Labour Relations in the British Columbia Building Trades Sector of the Construction Industry* BC Labour Relations Board, December 19, 2012.

⁵⁴ 1992 Report; *Looking to the Future – Taking Construction Labour Relations Into the 21st Century* Construction Industry Review Board, February 25, 1998; the 2012 *Interim Report*, *supra*.

APPENDIX "A"

**LABOUR RELATIONS CODE REVIEW PANEL REPORT TO THE MINISTER OF
LABOUR****RECOMMENDED AMENDMENTS*****Labour Relations Code Amendment Act, 2018***

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. **Section 1 of the Labour Relations Code, R.S.B.C. 1996, c. 244, is amended by adding the following definitions:**

"construction" means construction, alteration, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines, dams, tunnels, bridges, railways, canals or other works, but does not include

- (a) supplying, shipping or otherwise transporting supplies and materials or other products to or delivery at a construction project, or
- (b) services directly or indirectly related to servicing and maintenance of the premises;

"Minister" means the Minister of the Ministry responsible for the administration of this Code;

and

"picket" or "picketing" means attending at or near a person's place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to

- (a) enter that place of business, operations or employment,
- (b) deal in or handle that person's products, or
- (c) do business with that person,

and a similar act at such a place that has an equivalent purpose, but does not include lawful consumer leafleting that does not unduly impede access or egress or prevent employees from working at or from that site;

2. **Section 3 is repealed and the following substituted:**

3(1) The Minister must appoint a committee of special advisors to conduct public consultations and undertake a transparent review of this Code not less than every 5 years.

APPENDIX "A"

(2) In addition the Minister may appoint a committee of special advisors to undertake a continuing review of this Code and labour management relations and, without limitation, to

- (a) provide the Minister with an annual evaluation of the manner in which the legislation is functioning and to identify problems that may have arisen under its provisions,
- (b) make recommendations concerning the need for amendments to the legislation, and
- (c) make recommendations on any specific matter referred to the committee by the Minister.

(3) The Minister may make regulations considered necessary or advisable respecting the receipt and dissemination of submissions and recommendations under subsection (1).

3. **Section 6(1) is amended by striking out "Except as otherwise provide in section 8,".**

4. **Section 8 is repealed and the following substituted:**

Nothing in this Code deprives a person of the freedom to communicate to an employee a statement of fact or opinion reasonably held with respect to the employer's business.

5. **Section 14(4)(f) is repealed and the following substituted:**

(f) despite section 25 (3), if the employees affected by the order are seeking trade union representation the board may certify the trade union if it determines an act prohibited by section 5, 6, 7, or 9 has occurred and that remedial certification is appropriate and equitable to ensure the likely consequences of the unlawful interference on employee choice are fully remedied.

6. **Section 18(2)(a) and (b) are amended by striking out "6 months" and substituting "12 months"**

7. **Section 19 is repealed and the following substituted:**

19(1) Except in the construction

(a) if a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months of the last year of the collective agreement,

APPENDIX "A"

(b) if a collective agreement is in force for a term of 3 years or more, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months of the third year of the agreement and thereafter in the seventh and eighth months in each year of the collective agreement or any continuation.

(2) In construction

(a) if a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in July and August of the last year of the collective agreement,

(b) if a collective agreement is in force for a term of 3 years or more, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in July and August of the third year of the collective agreement and thereafter in July and August of each year of the collective agreement or any continuation.

(3) Despite subsections (1) and (2), an application for certification may not be made within 22 months of a previous application under those subsections if the previous application resulted in a decision by the board on the merits of the application.

(4) Unless the board consents, a trade union is not permitted to make an application under this section during a strike or lockout.

8. Section 24 is amended:

(a) **in subsection (2) by striking out "10 days" and substituting "5 days, excluding week-ends and statutory holidays," and by striking out "or, if the vote is to be conducted by mail, within a longer period the board orders.",**

(b) **by adding the following subsection**

(2.1) A vote may only be conducted by mail if the trade union and the employer agree or the board is satisfied that due to exceptional circumstances there is no viable alternative. In such case, the board must ensure the mail ballot is completed expeditiously.

9. Section 27 (1) is amended by adding the following paragraph:

APPENDIX "A"

(d) despite subsection (1) (c), if there is a change in representation pursuant to section 19 and there are two or more years remaining in the term of the collective agreement, the trade union may serve the employer with three months' notice of its desire to terminate the collective agreement and apply to the board to terminate the collective agreement. The board may declare the collective agreement terminated or make other orders and determinations as the board considers appropriate. If the board grants the request to terminate the collective agreement all provisions of this Code apply to the negotiation of the collective agreement.

10. Section 33 is amended:

(a) **in subsection (2) by striking out "10 days" and substituting "5 days, excluding week-ends and statutory holidays" and by striking out "or, if the vote is to be conducted by mail, within a longer period the board orders." ,**

(b) **by adding the following subsection:**

(2.1) A representation vote may only be conducted by mail ballot if the board is satisfied that due to exceptional circumstances, there is no viable alternative. In such case, the board must ensure the mail ballot is completed expeditiously.

(c) **in subsection (3) paragraphs (a) and (b) by striking out "10 months" and substituting "12 months".**

11. Section 35 is amended by adding the following subsections:

(1.1) This section applies if a contract for services for

(a) building cleaning, security or bus transportation, or

(b) in the health sector, including food, housekeeping, security, care-aids, long- term, or seniors' care

is re-tendered and substantially similar services continue to be performed, in whole or in part, under the direction of another employer.

(1.2) Subsection (1.1) is effective August 31, 2018.

and

APPENDIX "A"

- (1.3) Subsection (1.1) may be amended by order of the Lieutenant Governor in Council to provide for the addition of other sectors.

12. Section 45 (1)(b)(i) is repealed and the following substituted:

12 months after the board certifies the trade union as the bargaining agent for the unit, or until an application under Section 55, made within the 12 months, has concluded, whichever occurs last, or

13. Section 51 is amended by adding the following subsections:

(2) This requirement includes any substantive ancillary agreements amending rates of pay, hours of work or benefits and any continuation to the collective agreement or to the substantive ancillary agreements.

(3) If a copy of the collective agreement, including any substantive ancillary agreements, and any continuation of those agreements, has not been filed with the board, the board may decline to consider it in any proceedings under this Code.

14. Section 53(5) is amended by striking out "joint request of the parties" and substituting "request of either party".

15. Section 54 is amended:

(a) by adding the following subsections:

(2.1) If, after meeting in accordance with subsection (1), the parties have not agreed to an adjustment plan, either party may refer any outstanding issues to the associate chair of the Mediation Division for the appointment of a mediator to assist the parties to conclude an adjustment plan.

(2.2) If, after mediation, the parties have not agreed to an adjustment plan, the mediator may make recommendations for the terms of an adjustment plan.

(2.3) The parties must provide the information the mediator requests concerning the change, its impacts and the parties' efforts to develop an adjustment plan.

(b) in subsection (3) by striking out "subsections (1) and (2)" and substituting "subsections (1), (2), (2.1), (2.2) and (2.3)".

16. Section 55 is amended:

APPENDIX "A"

- (a) in subsection (1) (a) by striking out "and" after "so",
- (b) by repealing subsection (1) (b),
- (c) by repealing subsections (7) and (8) and substituting the following:

(7) If a remedial certification was granted, the mediator may consider the parties' conduct, prior to and following certification, when determining the recommended process under subsection 6(b).

(8) If the parties do not accept the mediator's recommended terms of settlement or if a first collective agreement is not concluded within 20 days of the report under subsection (6), the associate chair may direct a method set out in subsection (6) (b) for resolving the dispute and, if a remedial certification was granted, when making that direction may consider the parties' conduct, prior to and following certification.

(9) If the associate chair directs a method set out in subsection (6) (b) (i) or (ii), the parties must refrain from or cease any strike or lockout activity, and the terms of the collective agreement recommended or concluded under that subsection are binding on the parties.

17. Section 59 (2) (a) is amended by adding the following paragraph:

(iii) a lawful lockout has occurred for a period less than 72 hours and the employer has altered the terms and conditions of employment, or

18. Section 72 is amended:

- (a) in subsection (1)(a)(i) by striking out "or" after "British Columbia" and substituting "and ",
- (b) by repealing subsection (1) paragraph (a)(ii),
- (c) by repealing subsection (2.1), and
- (d) in subsections (3), (5)(a), (6) and (7) by striking out "or (2.1)".

19. Section 80 is repealed and the following substituted:

80 The Minister may, on application by an employer or trade union, on motion of the board, or on his or her own motion, direct the board to assist the parties to establish industry councils which may

- (a) recommend measures to achieve more efficient collective bargaining and procedures for settling disputes,

APPENDIX "A"

- (b) identify industry or sector issues, skills and training needs, health and safety related issues, competitive and productivity challenges,
- (c) develop labour market information and marketing initiatives, and
- (d) make any recommendations necessary to advance the industry or sector.

20. Section 87 (1) is amended by striking out "within 45 days of" and substituting "after" and by striking out "preceding a reference to arbitration,".

21. Section 89 is amended by adding the following subsection:

(2) The arbitration board must within 30 days of appointment conduct a case management conference to schedule the timely exchange of particulars and reliance documents, schedule hearings date(s) and encourage early mediation.

22. Section 100 is amended by adding "unrelated to the collective agreement, the labour relations context or related factual determinations and" after "general law".

23. Section 104 is amended:

- (a) in subsection (2) (b) by striking out "45 days" and substituting "15 days",**
- (b) in subsection (4) by striking out paragraphs (a) (b) and (c) and substituting the following paragraphs,**

(a) must appoint an arbitrator who is available to hear and determine the matter arising out of the difference in accordance with the timelines established in subsection (6),

(b) may, if a party so requests, appoint a settlement officer to assist the parties in settling the grievance before the hearing.

- (c) by striking out subsection 6 and substituting the following:**

(6) The arbitrator appointed under subsection (4) must

- (a) within 7 days of appointment conduct a case management conference to schedule the timely exchange of particulars and reliance documents, schedule the hearing and encourage early mediation,
- (b) schedule the arbitration promptly and conclude the arbitration within 90 days of the day on which the difference was referred to the director,
- (c) subject to subsection (7), issue brief written reasons, not to exceed 7 pages, within 30 days of the conclusion of the hearing.

APPENDIX "A"

(d) by adding the following subsection:

(6.1) The arbitrator for the purpose of providing a final and conclusive settlement of the dispute within the 90 day time limit the arbitrator, in addition to the authority under sections 82 and 89, may order

- (a) the hearing date(s),
- (b) a brief written summary of each party's position be exchanged in advance,
- (c) an agreed statement of facts be prepared and/or limited *viva voce* evidence,
- (d) a fixed time period for the presentation of any evidence and argument,
- (e) limited reference to legal or other authorities, and
- (f) any other step or procedure designed to facilitate an expedited decision in the proceeding.

(e) in subsection (7) striking out "must issue written reasons" and substituting "must, if requested by the parties, issue brief written reasons, not to exceed 7 pages,".

24. The following section is added:

123(1) The board must prepare a poster, available online, containing the following information relating to

- (a) the rights of employees
 - (i) to join a union and participate in its lawful activities including discussing and engaging in organizing during non-working time,
 - (ii) to apply for certification, to sign applications for membership in a union, to vote freely in a certification vote, to participate in collective bargaining, and
 - (iii) to engage in lawful actions under the *Code*.
- (b) the obligations of employers or persons acting on their behalf
 - (i) to recognize a certified union as the exclusive bargaining agent for all employees in the bargaining unit,
 - (ii) not to interfere with the formation, selection or administration of the union,
 - (iii) not to refuse to employ or continue to employ an employee or discriminate against an employee because that employee is a member of a union or is participating in organizing activities,
 - (iv) not to threaten to or impose any penalty or reward on an employee to compel or induce them from participating in organizing;

APPENDIX "A"

(v) not to fire, demote or transfer employees or take any adverse action because they have joined a union or taken part in organizing activities,

(vi) not to threaten to close a business or otherwise retaliate against employees for engaging in organizing activities, and

(vii) to bargain in good faith with the Union following certification.

(c) the obligations of a union or persons acting on behalf of a union not to threaten, intimidate or coerce employees to compel or induce employees to become or refrain from becoming a union member.

(d) the contact information for the Board including its website and telephone number.

(2) The board may require an employer to post the poster in a conspicuous location or locations in the work place.

25. Section 140(h) is repealed and the following substituted:

(h) if an application for certification has been received

(i) order an employer to provide a list of employees in the proposed bargaining unit to the board within such time as the board determines,

(ii) order that a representation vote be taken, in accordance with Part 3 and the regulations, among employees affected by the proceeding, before or after a hearing the board may conduct in respect of the proceeding,

(iii) appoint a returning officer who must be an employee of the board to conduct the taking and counting of the vote, in accordance with the board's direction, and

(iv) order that ballots cast in the vote be sealed in ballot boxes and not counted until the parties to the proceeding have been given an opportunity to be heard by the board,

26. Section 158 is amended by striking out "\$1000" in paragraph (a) and substituting "\$5000" and by striking out "\$10,000" in paragraph (b) and substituting "\$50,000".

Part 1 — Introductory Provisions

Definitions

1 (1) In this Code:

"associate chair" means the associate chair of that division of the board appropriate to the context;

"bargaining agent" means

(a) a trade union certified by the board as an agent to bargain collectively for an appropriate bargaining unit, or

(b) a person, or an employers' organization accredited by the board, authorized by an employer to bargain collectively on the employer's behalf;

"board" means the Labour Relations Board and if applicable includes the chair, an associate chair, a division of the board and a panel established under section 117;

"chair" means the chair of the Labour Relations Board appointed under this Code;

"collective agreement" means a written agreement between an employer, or an employers' organization authorized by the employer, and a trade union, providing for rates of pay, hours of work or other conditions of employment, which may include compensation to a dependent contractor for furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing;

"collective bargaining" means negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision, or to the regulation of relations between an employer and employees;

"construction" means construction, alteration, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines, dams, tunnels, bridges, railways, canals or other works, but does not include

APPENDIX "B"

- (a) supplying, shipping or otherwise transporting supplies and materials or other products to or delivery at a construction project, or
- (b) services directly or indirectly related to servicing and maintenance of the premises;

"council of trade unions" includes an allied council, a trades council, a joint board or another association of trade unions;

"day" means a calendar day;

"dependent contractor" means a person, whether or not employed by a contract of employment or furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;

"dispute" means a difference or apprehended difference between an employer or group of employers, and one or more of his or her or their employees or a trade union, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done;

"employee" means a person employed by an employer, and includes a dependent contractor, but does not include a person who, in the board's opinion,

- (a) performs the functions of a manager or superintendent, or
- (b) is employed in a confidential capacity in matters relating to labour relations or personnel;

"employer" means a person who employs one or more employees or uses the services of one or more dependent contractors and includes an employers' organization;

"employers' organization" means an organization of employers in British Columbia that has as one of its purposes the regulation in

APPENDIX "B"

British Columbia of relations between employers and employees through collective bargaining;

"lockout" includes closing a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his or her employees, done to compel his or her employees or to aid another employer to compel his or her employees to agree to conditions of employment;

"Minister" means the Minister of the Ministry responsible for the administration of this Code;

"party" means a person bound by a collective agreement or involved in a dispute;

"person" includes an employee, an employer, an employers' organization, a trade union and council of trade unions, but does not include a person in respect of whom collective bargaining is regulated by the *Canada Labour Code*;

"picket" or "picketing" means attending at or near a person's place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to

- (a) enter that place of business, operations or employment,
- (b) deal in or handle that person's products, or
- (c) do business with that person,

and a similar act at such a place that has an equivalent purpose, but does not include lawful consumer leafleting that does not unduly impede access or egress or prevent employees from working at or from that site;

"special officer" means a special officer appointed under section 106;

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is

APPENDIX "B"

designed to or does restrict or limit production or services, but does not include

- (a) a cessation of work permitted under section 63 (3), or
- (b) a cessation, refusal, omission or act of an employee that occurs as the direct result of and for no other reason than picketing that is permitted under this Code,

and **"to strike"** has a similar meaning;

"trade union" means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer;

"unit" means an employee or a group of employees, and the expression **"appropriate for collective bargaining"** or **"appropriate bargaining unit"**, with reference to a unit, means a unit determined by the board to be appropriate for collective bargaining, whether it is an employer unit, craft unit, technical unit, plant unit or another unit, and whether or not the employees in it are employed by one or more employers.

(2) A person does not cease to be an employee within the meaning of this Code by reason only of ceasing to work as a result of

- (a) a strike that is not contrary to this Code,
- (b) a dismissal that is contrary to this Code, or
- (c) a lockout.

Duties under this Code

2 The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that

APPENDIX "B"

- (a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
- (b) fosters the employment of workers in economically viable businesses,
- (c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
- (d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
- (e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
- (f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
- (g) ensures that the public interest is protected during labour disputes, and
- (h) encourages the use of mediation as a dispute resolution mechanism.

Continuing review of the Code

3 (1) The Minister must appoint a committee of special advisors to conduct public consultations and undertake a transparent review of this Code not less than every 5 years.

(2) In addition the Minister may appoint a committee of special advisors to undertake a continuing review of this Code and labour management relations and, without limitation, to

- (a) provide the Minister with an annual evaluation of the manner in which the legislation is functioning and to identify problems that may have arisen under its provisions,
- (b) make recommendations concerning the need for amendments to the legislation, and
- (c) make recommendations on any specific matter referred to the committee by the Minister.

APPENDIX "B"

(2) The Minister may make regulations considered necessary or advisable respecting the receipt and dissemination of submissions and recommendations under subsection (1).

Part 2 — Rights, Duties and Unfair Labour Practices

Rights of employers and employees

4 (1) Every employee is free to be a member of a trade union and to participate in its lawful activities.

(2) Every employer is free to be a member of an employers' organization and to participate in its lawful activities.

Prohibition against dismissals, etc., for exercising employee rights

5 (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person,
- (b) threaten dismissal of or otherwise threaten a person,
- (c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a trade union, or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Code or because the person has made or is about to make a disclosure that may be required of the person in a proceeding under this Code or because the person has made an application, filed a complaint or otherwise exercised a right conferred under this Code or because the person has participated or is about to participate in a proceeding under this Code.

(2) If no collective agreement respecting a unit is in force and a complaint is filed with the board alleging that an employee in that unit has been discharged, suspended, transferred or laid off from employment or otherwise disciplined in contravention of this Code,

APPENDIX "B"

the board must forthwith inquire into the matter and, if the complaint is not settled or withdrawn, the board must

- (a) commence a hearing on the complaint within 3 days of its filing,
- (b) promptly proceed with the hearing without interruption, except for any necessary adjournments, and
- (c) render a decision on the complaint within 2 days of the completion of the hearing.

Unfair labour practices

6 (1) An employer or a person acting on behalf of an employer must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it.

(2) Despite this section, an employer may permit an employee or representative of a trade union to confer with the employer during working hours or to attend to the trade union's business during working hours without deducting time so occupied in computing the time worked for the employer and without deducting wages for that time.

(3) An employer or a person acting on behalf of an employer must not

- (a) discharge, suspend, transfer, lay off or otherwise discipline an employee, refuse to employ or to continue to employ a person or discriminate against a person in regard to employment or a condition of employment because the person

- (i) is or proposes to become or seeks to induce another person to become a member or officer of a trade union, or

- (ii) participates in the promotion, formation or administration of a trade union,

- (b) discharge, suspend, transfer, lay off or otherwise discipline an employee except for proper cause when a

APPENDIX "B"

trade union is in the process of conducting a certification campaign for employees of that employer,

(c) impose in a contract of employment a condition that seeks to restrain an employee from exercising his or her rights under this Code,

(d) seek by intimidation, by dismissal, by threat of dismissal or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms or conditions of employment, to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union,

(e) use or authorize or permit the use of the services of a person in contravention of section 68, or

(f) refuse to agree with a trade union, certified under this Code as the bargaining agent for his or her employees who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 17, will pay union dues from time to time to the trade union.

(4) Despite subsection (3), except as expressly provided, this Code must not be interpreted to limit or otherwise affect the right of the employer to

(a) discharge, suspend, transfer, lay off or otherwise discipline an employee for proper cause, or

(b) make a change in the operation of the employer's business reasonably necessary for the proper conduct of that business.

Limitation on activities of trade unions

7 (1) Except with the employer's consent, a trade union or person acting on its behalf must not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.

APPENDIX "B"

(2) If employees reside on their employer's property or on property to which the employer or another person has the right to control access or entry, the employer or other person must on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union and, if the trade union acquires bargaining rights, after that to enter the property to conduct business of the trade union.

(3) If directed by the board and on request by the trade union representative, the employer must provide the representative with food and lodging at the current price and of a similar kind and quality as that provided to the employees.

Right to communicate

8 Nothing in this Code deprives a person of the freedom to communicate to an employee a statement of fact or opinion reasonably held with respect to the employer's business.

Coercion and intimidation prohibited

9 A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

Internal union affairs

10 (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to

- (a) matters in the constitution of the trade union,
- (b) the person's membership in a trade union, or
- (c) discipline by a trade union.

(2) A trade union must not expel, suspend or impose a penalty on a member or refuse membership in the trade union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the trade union or council of trade unions

APPENDIX "B"

- (a) if in doing so the trade union acts in a discriminatory manner, or
 - (b) because that member or person has refused or failed to participate in activity prohibited by this Code.
- (3) If a trade union charges, levies or prescribes different initiation fees, dues or assessments in respect of a person according to whether the person applies or has applied for membership in the trade union before or after an application for certification by the trade union to represent the person as bargaining agent, the fees, dues or assessments are deemed to be discriminatory for the purpose of subsection (2) (a).

Requirement to bargain in good faith

- 11** (1) A trade union or employer must not fail or refuse to bargain collectively in good faith in British Columbia and to make every reasonable effort to conclude a collective agreement.
- (2) If a trade union and the employer have concluded a collective agreement outside British Columbia, it is invalid in British Columbia until a majority of the employees in British Columbia covered by the agreement ratify it.

Duty of fair representation

- 12** (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith
- (a) in representing any of the employees in an appropriate bargaining unit, or
 - (b) in the referral of persons to employment
- whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.
- (2) It is not a violation of subsection (1) for a trade union to enter into an agreement under which
- (a) an employer is permitted to hire by name certain trade union members,

APPENDIX "B"

(b) a hiring preference is provided to trade union members resident in a particular geographic area, or

(c) an employer is permitted to hire by name persons to be engaged to perform supervisory duties.

(3) An employers' organization must not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers in the group appropriate for collective bargaining.

Procedure for fair representation complaint

13 (1) If a written complaint is made to the board that a trade union, council of trade unions or employers' organization has contravened section 12, the following procedure must be followed:

(a) a panel of the board must determine whether or not it considers that the complaint discloses a case that the contravention has apparently occurred;

(b) if the panel considers that the complaint discloses sufficient evidence that the contravention has apparently occurred, it must

(i) serve a notice of the complaint on the trade union, council of trade unions or employers' organization against which the complaint is made and invite a reply to the complaint from the trade union, council of trade unions or employers' organization, and

(ii) dismiss the complaint or refer it to the board for a hearing.

(2) If the board is satisfied that the trade union, council of trade unions or employers' organization contravened section 12, the board may make an order or direction referred to in section 14 (4) (a), (b) or (d).

Inquiry into unfair labour practice

14 (1) If a written complaint is made to the board that any person is committing an act prohibited by section 5, 6, 7, 9, 10, 11 or 12,

APPENDIX "B"

the board must serve a notice of the complaint on the person against whom it is made and on any other person affected by it.

(2) The board may appoint an officer to inquire into the complaint and attempt to settle the matter complained of, and the officer must report the results of his or her inquiry and endeavours to the board.

(3) If an appointment is not made under subsection (2), or the officer is unable to settle the matter, the board may inquire into the complaint.

(4) If, on inquiry, the board is satisfied that any person is doing, or has done, an act prohibited by section 5, 6, 7, 9, 10, 11 or 12, it may

(a) make an order directing the person to cease doing the act,

(b) in the same or a subsequent order, direct any person to rectify the act,

(c) in the case of an employer, include a direction to reinstate and pay an employee a sum equal to wages lost due to his or her discharge, suspension, transfer, layoff or other disciplinary action contrary to section 6 (3) (a) or (b),

(d) in the case of a trade union, include a direction to reinstate a person to membership in the trade union and pay to that person

- (i) a sum equal to wages lost due to his or her expulsion or suspension contrary to section 10, and
- (ii) the amount of any penalty, levy, fee, dues or assessment imposed on him or her contrary to section 10,

(e) in the same or a subsequent order, direct the employer not to increase or decrease wages, or alter a term or condition of employment of the employees affected by the order for a period not exceeding 30 days without written permission of the board, and the board may extend this order for a further period not exceeding 30 days, and

(f) despite section 25 (3), if the employees affected by the order are seeking trade union representation the board may certify the trade union if it determines an act prohibited by section 5, 6, 7, or 9 has occurred and that remedial

APPENDIX "B"

certification is appropriate and equitable to ensure the likely consequences of the unlawful interference on employee choice are fully remedied.

(5) The board may impose conditions it considers necessary or advisable on a trade union that is certified under subsection (4) (f), and if the conditions are not substantially fulfilled to the board's satisfaction within 12 months from the date of the certification, or in a lesser period ordered by the board, the certification is deemed to be cancelled.

(6) If in the board's opinion a complaint under subsection (1) is without merit, it may reject the complaint at any time.

(7) On an inquiry by the board into a complaint under section 6 (3) (a) or (b), the burden of proof that the employer did not contravene paragraph (a) or (b) lies on the employer.

Collective agreement may provide for union membership

15 (1) Nothing in this Code is to be construed as precluding the parties to a collective agreement from inserting in it, or carrying out, a provision

(a) requiring membership in a specified trade union as a condition of employment, or

(b) granting preference in employment to members of a specified trade union.

(2) Despite subsection (1), a trade union or person acting on its behalf must not require an employer to terminate the employment of an employee due to his or her expulsion or suspension from that trade union on the ground that he or she is or was a member of another trade union.

Assignment of fees and dues

16 (1) An employer must honour an employee's written assignment of wages to a trade union certified as the bargaining agent for his or her employees under this Code, unless the assignment is declared null and void by the board, or is revoked by the assignor.

(2) The assignment must be substantially in the following form:

APPENDIX "B"

To *[name of employer]*.

Until this authority is revoked by me in writing, I authorize you to deduct from my wages and to pay to *[name of the trade union]* fees and dues in the amounts following:

- (1) Initiation fees in the amount \$_____;
- (2) Dues of \$_____ per _____;
- (3) Dues of _____% of hourly, weekly or monthly wages.

(3) Unless an assignor of wages revokes the assignment by written notice to the employer, or the board declares an assignment to be null and void, the employer must remit at least once each month to the trade union certified under this Code and named in the assignment the fees and dues deducted, with a written statement containing the names of the employees for whom deductions were made and the amount of each deduction.

(4) If an assignment is revoked, the employer must give a copy of the revocation to the assignee.

(5) Despite subsections (1), (2) and (3), the employer has no financial responsibility for the fees or dues of an employee, unless the employer owes the employee sufficient unpaid wages to pay the fees and dues assigned.

Religious objections

17 (1) If the board is satisfied that an employee, because of his or her religious conviction or belief

- (a) objects to joining trade unions generally, or
- (b) objects to the paying of dues or other assessments to trade unions generally

the board may order that the provisions of a collective agreement of the type referred to in section 15 do not apply to the employee and that the employee is not required to join a trade union, to be or continue to be a member of a trade union, or to pay any dues, fees or assessments to the trade union, if amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are

APPENDIX "B"

remitted by the employer to a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) that may be designated by the board.

(2) Despite any other provision of this Code, a person exempted under subsection (1) is not entitled to participate in a vote conducted by a trade union or in a vote held for the purposes of this Code.

Part 3 — Acquisition and Termination of Bargaining Rights

Division 1 — Acquisition of Bargaining Rights

Acquisition of bargaining rights

18 (1) If a collective agreement is not in force and a trade union is not certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing not less than 45% of the employees in that unit may at any time, subject to the regulations, apply to the board to be certified for the unit.

(2) If a collective agreement is not in force and a trade union is certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may, subject to the regulations, apply to the board to be certified for the unit if either

- (a) 12 months have elapsed since the date of certification of a trade union for the unit, or
- (b) the board has consented to an application before the expiry of the 12 months.

(3) Unless the board consents, a trade union is not permitted to make an application under subsection (2) during a strike or lockout.

(4) Despite this section and section 19

- (a) a trade union that is a party to a collective agreement, but is not certified for the employees covered by it, may apply to be certified at any time, and

APPENDIX "B"

(b) a council of trade unions comprised of trade unions that are parties to collective agreements may apply to be certified at any time in place of those trade unions.

Change in union representation**19** (1) Except in construction

- (a) if a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months of the last year of the collective agreement,
- (b) if a collective agreement is in force for a term of 3 years or more, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months of the third year of the agreement and thereafter in the seventh and eighth month in each year of the collective agreement or any continuation.

(2) In construction

- (a) if a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in July and August of the last year of the collective agreement,
- (b) if a collective agreement is in force for a term of 3 years or more, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in July and August of the third year of the

APPENDIX "B"

collective agreement and thereafter in July and August of each year of the collective agreement or any continuation.

(3) Despite subsections (1) and (2), an application for certification may not be made within 22 months of a previous application under those subsections if the previous application resulted in a decision by the board on the merits of the application.

(4) Unless the board consents, a trade union is not permitted to make an application under this section during a strike or lockout.

Joint application

20 Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Code relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

Craft unions

21 (1) If one or more employees belong to a craft or group exercising technical or professional skills that distinguish it from the employees as a whole, and they are members of one trade union pertaining to the craft or skills, the trade union may, subject to sections 18, 19, 20, 24 and 25, apply to the board to be certified as the bargaining agent for the group if it is otherwise an appropriate bargaining unit.

(2) A trade union claiming to have as members in good standing a majority of the employees in a unit for which a craft or professional trade union is the bargaining agent under this section may apply to the board to have the unit included in another unit, and sections 18, 19, 20, 24 and 25 apply.

(3) If an application is not made under subsection (2), the employees in the unit for which a craft or professional trade union is the bargaining agent under this section must be excluded from another

APPENDIX "B"

unit for the purpose of collective bargaining and must not be taken into account as members of another unit for purposes of this Code.

Determination of appropriate unit

22 (1) When a trade union applies for certification as the bargaining agent for a unit, the board must determine if the unit is appropriate for collective bargaining and may, before certification, include additional employees in or exclude employees from the unit.

(2) The board must

(a) make or cause to be made the examination of records and other inquiries including the holding of hearings it considers necessary to determine the merits of an application for certification, and

(b) specify the nature of the evidence the applicant must furnish in support of the application and the manner of application.

(3) Membership in good standing in a trade union must be determined on the basis of membership requirements prescribed in the regulations.

Repealed

23 [Repealed 2001-33-3.]

Representation vote required

24 (1) If the board receives an application for certification under this Part and the board is satisfied that on the date the board receives the application at least 45% of the employees in the unit are members in good standing of the trade union, the board must order that a representation vote be taken among the employees in that unit.

(2) A representation vote under subsection (1) must be conducted within 5 days, excluding week-ends and statutory holidays, from the date the board receives the application for certification.

(2.1) A vote may only be conducted by mail if the trade union and the employer agree or the board is satisfied that due to exceptional

APPENDIX "B"

circumstances there is no viable alternative. In such case, the board must ensure the mail ballot is completed expeditiously.

(3) The board may direct that another representation vote be conducted if less than 55% of the employees in the unit cast ballots.

Outcome of representation vote

25 (1) When a representation vote is taken, a majority must be determined as the majority of the employees in the unit who cast ballots.

(2) If after a representation vote is taken, the board is satisfied that

(a) the majority of votes favour representation by the trade union, and

(b) the unit is appropriate for collective bargaining,

the board must certify the trade union as the bargaining agent for the unit.

(3) If after a representation vote is taken, the board is

(a) satisfied that the majority of votes are not in favour of the trade union representing the unit as its bargaining agent, or

(b) not satisfied that the unit is appropriate for collective bargaining,

the trade union may not be certified as bargaining agent for the unit.

Repealed

26 [Repealed 2001-33-5.]

Effect of certification

27 (1) If a trade union is certified as the bargaining agent for an appropriate bargaining unit,

(a) it has exclusive authority to bargain collectively for the unit and to bind it by a collective agreement until the certification is cancelled,

APPENDIX "B"

(b) if another trade union has been certified as the bargaining agent for the unit, the certification of that other trade union is cancelled for the unit, and

(c) if a collective agreement binding on the unit is in force at the date of certification, the agreement remains in force.

(d) despite subsection (1) (c), if there is a change in representation pursuant to section 19 and there are two or more years remaining in the term of the collective agreement, the trade union may serve the employer with three months' notice of its desire to terminate the collective agreement and apply to the board to terminate the collective agreement. The board may declare the collective agreement terminated or make other orders and determinations as the board considers appropriate. If the board grants the request to terminate the collective agreement all provisions of this Code apply to the negotiation of the collective agreement.

(2) Despite subsection (1) (c) and except if the trade union party to the collective agreement obtains the certification, the rights and obligations that were conferred or imposed by the collective agreement on the trade union party to the collective agreement cease insofar as that trade union is concerned, and are conferred or imposed on the trade union certified as the bargaining agent.

Dependent contractors

28 (1) If an application for certification is made for a unit consisting of, or including, dependent contractors, and the application meets the requirements of sections 24 and 25, the board must

(a) if there is no other certified unit of employees of the same employer, determine whether the unit applied for is appropriate for collective bargaining and, if so, certify that unit, or

(b) if there is a certified unit of employees of the same employer, determine whether inclusion of the dependent

APPENDIX "B"

contractors in the existing unit would be more appropriate for collective bargaining and, if so, require that an application be made to vary the certification.

(2) If the board has determined under subsection (1) (b) that a variance of the existing bargaining unit would be more appropriate for collective bargaining and an application for variance is made, the board must

(a) determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that a representation vote be taken as it considers necessary or advisable,

(b) ensure that reasonable procedures have been developed to integrate dependent contractors and employees into a single bargaining unit,

(c) modify or restrict the operation or effect of a collective agreement in order to determine the seniority rights under it of employees or dependent contractors, and

(d) give directions that the board considers necessary or advisable as to the interpretation and application of a collective agreement affecting the employees and dependent contractors in a unit determined under this section to be appropriate for collective bargaining.

Unit partly supervisory

29 If a trade union applies for certification as the bargaining agent for a unit consisting of

(a) employees who supervise other employees, and

(b) any of the other employees,

the board may certify the trade union for the unit, for a unit consisting only of employees who supervise or for a unit composed of some or all of the other employees.

Repeated applications for certification

30 If the trade union is not certified as the bargaining agent under section 25, or a cancellation of certification is refused under section

APPENDIX "B"

33 (4) (b), the board may designate the length of time, not less than 90 days, that must elapse before a new application by the same applicant may be considered.

Prohibited employee associations

31 An organization or association of employees

- (a) the formation, administration, management or policy of which is, in the board's opinion, dominated or influenced by an employer or a person acting on his or her behalf, or
- (b) that discriminates against a person contrary to the *Human Rights Code*,

must not be certified for the employees, and an agreement entered into between that organization or association of employees and the employer is deemed not to be a collective agreement.

No change during certification

32 (1) If an application for certification is pending, a trade union or person affected by the application must not declare or engage in a strike, an employer must not declare a lockout, and an employer must not increase or decrease rates of pay or alter a term or condition of employment of the employees affected by the application, without the board's written permission.

(2) This section must not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or otherwise discipline an employee for proper cause.

Division 2 — Revocation of Bargaining Rights**Revocation of bargaining rights**

33 (1) If at any time after a trade union has been certified for a unit the board is satisfied, after the investigation it considers necessary or advisable, that the trade union has ceased to be a trade union, or that the employer has ceased to be the employer of the employees in the unit, it may cancel the certification.

APPENDIX "B"

(2) If a trade union is certified as the bargaining agent for a unit and not less than 45% of the employees in the unit sign an application for cancellation of the certification, the board must order that a representation vote be conducted within 5 days, excluding week-ends and statutory holidays, of the date of the application.

(2.1) A representation vote may only be conducted by mail ballot if the board is satisfied that due to exceptional circumstances, there is no viable alternative. In such case, the board must ensure the mail ballot is completed expeditiously..

(3) An application referred to in subsection (2) may not be made

- (a) during the 12 months immediately following the certification of the trade union as the bargaining agent for the unit,
- (b) during the 12 months immediately following a refusal under subsection (6) to cancel the certification of that trade union, or
- (c) during a period designated by the board under section 30 following a refusal under subsection (4) (b) of this section to cancel the certification of that trade union.

(4) After a representation vote ordered under subsection (2) is held the board must,

- (a) if the majority of the votes included in the count are against having the trade union represent the unit as the bargaining agent, cancel the certification of the trade union as the bargaining agent for that unit, or
- (b) if the majority of votes included in the count favour having the trade union represent the unit as bargaining agent, refuse the application.

(5) The board may direct that another representation vote be taken if

- (a) a representation vote was taken under subsection (2), and
- (b) less than 55% of eligible employees cast ballots.

(6) If an application is made under subsection (2), the board may, despite subsections (2) and (4), cancel or refuse to cancel the certification of a trade union as bargaining agent for a unit without a

APPENDIX "B"

representation vote being held, or without regard to the result of a representation vote, in any case where

(a) any employees in the unit are affected by an order under section 14, or

(b) the board considers that because of improper interference by any person a representation vote is unlikely to disclose the true wishes of the employees.

(7) Despite subsection (10), if the certification of a trade union as the bargaining agent for a unit is cancelled under subsection (6), that trade union must not, during the 10 months immediately following the cancellation, apply for certification as the bargaining agent for employees in the unit.

(8) Subject to subsection (9), if the certification of a trade union as the bargaining agent is cancelled under any provision of this Code, a collective agreement between the trade union and the employer of the employees in the unit for which the certification is cancelled is void with respect to that unit.

(9) Nothing in subsection (8) affects the operation of section 27 (1) (c) and (2).

(10) If the certification of a trade union as the bargaining agent for a unit is cancelled under any provision of this Code, no other trade union may apply for certification as bargaining agent for the employees within that unit until a period of 10 months or a shorter period specified by the board has elapsed.

(11) On receipt of an application for cancellation of certification the board may cancel the certification of a bargaining agent for a bargaining unit if it is satisfied that the bargaining agent has abandoned its bargaining rights in respect of the employees in the bargaining unit.

Revocation of voluntarily recognized bargaining rights

34 Section 33 applies to the revocation of bargaining rights if a trade union is a party to a collective agreement but is not certified for the employees covered by the collective agreement.

Division 3 — Successor Rights and Obligations

Successor rights and obligations

35 (1) If a business or a part of it is sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Code before the date of the disposition and the proceedings must continue as if no change had occurred.

(1.1) This section applies if a contract for services for

(a) building cleaning, security or bus transportation, or

(b) in the health sector, including food, housekeeping, security, care-aids, long-term, or seniors' care

is re-tendered and substantially similar services continue to be performed, in whole or in part, under the direction of another employer.

(1.2) Subsection (1.1) is effective August 31, 2018.

(1.3) Subsection (1.1) may be amended by order of the Lieutenant Governor in Council to provide for the addition of other sectors.

(2) If a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee, as the case may be.

(3) If a question arises under this section, the board, on application by any person, must determine what rights, privileges and duties have been acquired or are retained.

(4) For the purposes of this section, the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.

(5) The board, having made an inquiry or directed a vote under this section, may

(a) determine whether the employees constitute one or more units appropriate for collective bargaining,

(b) determine which trade union is to be the bargaining agent for the employees in each unit,

(c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement,

(d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority

APPENDIX "B"

rights under it of employees affected by the sale, lease, transfer or other disposition, and

(e) give directions the board considers necessary or advisable as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining.

Federal-Provincial successorship

36 If collective bargaining relating to a business is governed by the laws of Canada and that business or part of it is sold, leased, transferred or otherwise disposed of and becomes subject to the laws of British Columbia, section 35 applies and the purchaser, lessee or transferee is bound by any collective agreement in force at the time of the disposition.

Merger or amalgamation

37 (1) If a trade union claims that because of a merger, amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was certified or voluntarily recognized as the bargaining agent for a unit, the board may, in a proceeding before the board or on application by the trade union concerned,

(a) declare that the successor has, or has not, acquired its predecessor's rights, privileges and duties under this Code, or

(b) dismiss the application.

(2) Before issuing a declaration under subsection (1), the board may make the inquiries, require the production of the evidence and hold the votes it considers necessary or advisable.

(3) If the board makes an affirmative declaration under subsection (1), for the purposes of this Code the successor acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.

Several businesses treated as one employer

38 If in the board's opinion associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them under common control or direction, the board may treat them as constituting one employer for the purposes of this Code and grant such relief, by way of declaration or otherwise, as the board considers appropriate.

Division 4 — Voting**Voting requirements**

39 (1) All voting directed by the board or by the Minister under this Code and other votes held by a trade union or employers' organization of their respective members on a question of whether to strike or lock out, or whether to accept or ratify a proposed collective agreement, must be by secret ballot cast in such a manner that the person expressing a choice cannot be identified with the choice expressed.

(2) The results of a vote referred to in subsection (1), including the number of ballots cast and the number of votes for, against or spoiled, must be made available to both

(a) the members, and

(b) the trade union and employer affected.

(3) A vote referred to in subsection (1) must be conducted in accordance with the regulations.

(4) If the board in its discretion directs that they may vote, the following persons are eligible to vote in a representation vote:

(a) persons who at the time an application for certification was received by the board were not employees in the proposed unit but are employees in the unit at the time of the vote;

(b) persons who at the time an application for decertification was received by the board were employees

APPENDIX "B"

in the unit, but are not employees in the unit at the time of the vote.

Additional voting requirements

40 (1) Subject to section 17 (2), all employees in a bargaining unit, whether or not they are members of the trade union or of any constituent union of a council of trade unions, may participate in votes held by a trade union of its members on a question of whether to strike or whether to accept or ratify a proposed collective agreement.

(2) If a trade union coordinates collective bargaining on behalf of more than one bargaining unit, the results of any vote conducted by the trade union of a particular bargaining unit must not be counted until all bargaining units engaged in the bargaining have voted.

(3) If a vote is conducted by mail, then for the purposes of this Code, the vote is deemed to have been held on the day that ballot papers are left with a post office as defined by the *Canada Post Corporation Act* for transmission to the persons who are to vote or, if the ballot papers are left for that purpose with the post office on different days, on the last of those days.

Division 5 — Councils of Trade Unions**Certification of councils of trade unions**

41 (1) To secure and maintain industrial peace and promote conditions favourable to settlement of disputes, the Minister may, on application by one or more trade unions or on his or her own motion, and after the investigation considered necessary or advisable, direct the board to consider, despite section 18, 19 or 21, whether in a particular case a council of trade unions would be an appropriate bargaining agent for a unit.

(2) If a direction is made under subsection (1), the board must determine whether

(a) the proposed bargaining unit is appropriate for collective bargaining, and

APPENDIX "B"

(b) the proposed council of trade unions is representative of the employees in that unit

and must make any other examination of records, inquiry or findings including the holding of hearings it considers necessary to determine the matter.

(3) After a determination under subsection (2) and if the board considers it necessary or advisable the board may

(a) certify a council of trade unions as the bargaining agent, or

(b) vary a certification by substituting for the trade union or trade unions named in it a council of trade unions as bargaining agent for that unit.

(4) The provisions of this Code relating to an application for certification of and to the certification of a trade union apply to an application for certification of and to certification of a council of trade unions.

(5) The board may make orders and issue directions it considers necessary or advisable respecting the formation of councils of trade unions and the fair representation of the trade unions comprising the council of trade unions.

(6) If the board certifies a council of trade unions under this section, it may

(a) determine that no collective agreement is in effect or binding on all or any of the employees in the unit,

(b) determine whether a provision of a collective agreement is binding on all or any of the employees in the unit,

(c) determine that a provision in a collective agreement that is in effect and binding on all or any of the employees should continue to be in effect and binding on those employees for a term the board determines,

(d) extend the provisions of one or more collective agreements that are in effect to all or any of the employees,

(e) settle the terms and conditions of a new collective agreement based in whole or in part on one or more of the

APPENDIX "B"

collective agreements in effect and binding on all or any of the employees, and

(f) make other orders or determinations that may be necessary or advisable to carry out the purposes of this section.

Bargaining council

41.1 (1) In this section, "**CLRA**" means the Construction Labour Relations Association of B.C., a society under the *Societies Act*.

(2) The bargaining council established under section 55.18, as that section read before its repeal by the *Skills Development and Labour Statutes Amendment Act, 2001*, is continued, is deemed to be a council of trade unions established under section 41 and is authorized to bargain on behalf of its constituent unions with the CLRA.

(3) Within 6 months from the date that this section comes into force, the board must review the constitution and bylaws of the bargaining council to ensure that they are consistent with section 41.

Dissolution of councils of trade unions

42 (1) A constituent union of a council of trade unions must not withdraw from the council of trade unions unless it obtains the consent of the board and complies with subsection (2) or (3).

(2) If a council of trade unions is a party to or is bound by a collective agreement, no resolution, bylaw or other action by the constituent trade unions of that council of trade unions to dissolve the council of trade unions, or by a constituent trade union of that council of trade unions to withdraw from the council of trade unions, as the case may be, has effect

(a) unless a copy of the resolution, bylaw or other action is delivered to the employer and, in the case of a withdrawal, to the other constituent members and to the council of trade unions, at least 90 days before the collective agreement ceases to operate, and

(b) until the collective agreement ceases to operate.

APPENDIX "B"

(3) If a council of trade unions is not a party to or bound by a collective agreement, no resolution, bylaw or other action by the constituent trade unions of that council of trade unions to dissolve the council of trade unions, or by a constituent trade union of that council of trade unions to withdraw from the council of trade unions, has effect until the 90th day after the day a copy of the resolution, bylaw or other action is delivered to the employer and, in the case of a withdrawal, to the other constituent members and to the council of trade unions.

Division 6 — Employers' Organizations

Accreditation of employers' organization

43 (1) Despite this Code or a collective agreement, an employers' organization may, subject to the regulations, apply to the board to be accredited as bargaining agent for the employers named in the application.

(2) The board must

(a) make or cause to be made the examination of records or other inquiries, including the holding of hearings it considers necessary to determine the merits of the application, and

(b) specify the manner of application and the nature of the evidence that the applicant must furnish in support of the application.

(3) The board may, before accreditation, add the names of additional employers to or delete the names of employers from those named in the application.

(4) If after the inquiry the board considers adequate it is satisfied the employers named in the application, or in the application as amended under subsection (3),

(a) constitute a group appropriate for collective bargaining,

(b) are members of the employers' organization applying or have been added to the application under subsection (3),
and

APPENDIX "B"

(c) have agreed to accreditation of the applicant as bargaining agent,

the board may accredit the employers' organization as bargaining agent for the employers named in the accreditation.

(5) If an employers' organization is accredited under this section, it has exclusive authority for the time the employer is named in the accreditation to bargain collectively for the employer and to bind the employer by collective agreement.

(6) If an employer named in an accreditation applies to the board to amend the accreditation by deleting the employer's name from it, and

(a) the employer has been included in the accreditation for 2 years, and

(b) the employer makes the application not less than 9 months before the expiry date of all collective agreements entered into by the employers' organization on the employer's behalf,

the board must grant the application.

Employers' organization membership and fees

44 (1) An employers' organization must not

(a) refuse membership in the employers' organization to an employer, or

(b) terminate an employer's membership in the employers' organization

except for a cause that is in the board's opinion fair and reasonable.

(2) An employers' organization must not charge or levy initiation fees, dues or assessments that are in the board's opinion unreasonable or discriminatory.

Part 4 — Collective Bargaining Procedures

Division 1 — General

Notice to bargain collectively

APPENDIX "B"

45 (1) When the board certifies a trade union as the bargaining agent for employees in a unit and a collective agreement is not in force,

(a) the trade union may by written notice require the employer to commence collective bargaining, or the employer may by written notice require the trade union to commence collective bargaining, and

(b) the employer must not increase or decrease the rate of pay of an employee in the unit or alter another term or condition of employment until

(i) 12 months after the board certifies the trade union as the bargaining agent for the unit, or until an application under Section 55, made within the 12 months, has concluded, whichever occurs last, or

(ii) a collective agreement is executed,

whichever occurs first.

(2) If notice to commence collective bargaining has been given and the term of a collective agreement that was in force between the parties has expired, the employer or the trade union must not, except with the consent of the other, alter any term or condition of employment, until

(a) a strike or lockout has commenced,

(b) a new collective agreement has been negotiated, or

(c) the right of the trade union to represent the employees in the bargaining unit has been terminated,

whichever occurs first.

(3) Despite subsection (1), the board, after notice to the trade union, may

(a) authorize an employer to increase or decrease the rate of pay of an employee in the unit, or alter a term or condition of employment, and

(b) specify conditions to be observed by an employer so authorized.

APPENDIX "B"

(4) This section must not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or otherwise discipline an employee for proper cause.

Notice before expiry of agreement

46 (1) Either party to a collective agreement, whether entered into before or after the coming into force of this Code, may at any time within 4 months immediately preceding the expiry of the agreement, by written notice require the other party to commence collective bargaining.

(2) A copy of the notice given under section 45 and the notice with the endorsement referred to in this section must be sent by registered mail to the associate chair of the Mediation Division within 3 days after notice is given under subsection (1) of this section.

(3) The endorsement must state where, when and to whom the original notice was given.

(4) If a notice is not given under subsection (1) by either party 90 days or more before the expiry of the agreement, both parties are deemed to have given notice under this section 90 days before the expiry.

Collective bargaining

47 If notice to commence collective bargaining has been given

- (a) under section 45, the trade union and the employer, or
- (b) under section 46, the parties to the collective agreement

must, within 10 days after the date of the notice, commence to bargain collectively in good faith, and make every reasonable effort to conclude a collective agreement or a renewal or revision of it.

Parties bound by collective agreement

48 A collective agreement is binding on

- (a) a trade union that has entered into it or on whose behalf a council of trade unions has entered into it, and

APPENDIX "B"

every employee of an employer who has entered into it and who is included in or affected by the agreement, and
(b) an employer who has entered into it and on whose behalf an employers' organization authorized by that employer has entered into it.

Terms of collective agreement to be carried out

49 (1) A person bound by a collective agreement, whether entered into before or after the coming into force of this Code, must
(a) do everything the person is required to do, and
(b) refrain from doing anything the person is required to refrain from doing

by the provisions of the collective agreement.

(2) A failure to meet a requirement of subsection (1) is a contravention of this Code.

(3) If an agreement is reached as the result of collective bargaining, both parties must execute it.

(4) Nothing in this section requires or authorizes a person to do anything that conflicts with a requirement of or under this Code.

(5) If there is any conflict between a provision of a collective agreement and a requirement of or under this Code, the requirement of or under this Code prevails.

Agreement for less than one year

50 (1) Despite anything contained in it, a collective agreement, whether entered into before or after the coming into force of this Code, must, if for a term of less than one year, be deemed to be for a term of one year from the date it came or comes into operation, and must not, except with the Minister's consent be terminated by the parties within a period of one year from that date.

(2) Subject to subsection (4), if a collective agreement is for a term of more than one year, either party may at any time after the agreement has been in operation for 8 months apply to the Minister

APPENDIX "B"

for leave to notify the other party that the agreement will be terminated on its next anniversary date.

(3) If the Minister consents to the application under subsection (2) and the notice to terminate is served on the other party at least 3 months before the date on which the agreement is to be terminated, the agreement is terminated on that date.

(4) At the time of making a collective agreement for more than a year, the parties may, in the agreement, specifically exclude the operation of subsections (2) and (3), and in that event subsections (2) and (3) do not apply to the agreement.

Copies of collective agreements to be filed

51 (1) Each of the parties to a collective agreement must, within 30 days after its execution, file a copy of it with the board.

(2) This requirement includes any substantive ancillary agreements amending rates of pay, hours of work or benefits and any continuation to the collective agreement or to the substantive ancillary agreements.

(3) If a copy of the collective agreement, including any substantive ancillary agreements, and any continuation of those agreements, has not been filed with the board, the board may decline to consider it in any proceedings under this Code.

Extraprovincial companies

52 (1) An extraprovincial company for which a trade union has been certified as bargaining agent for a unit of employees of that company must, within 5 days of the certification, appoint a person resident in British Columbia with authority to bargain collectively to

(a) conclude a collective agreement with the trade union,
and

(b) sign the agreement on behalf of the company.

(2) A collective agreement signed by a person appointed under subsection (1) is binding on the company.

APPENDIX "B"

(3) If the Minister believes that no appointment has been made as required by subsection (1), the Minister may make the appointment and notify the company and the trade union, and that appointment is as binding on the company as if the person were appointed by the company.

Division 2 — Joint Consultation and Adjustment Plans

Joint consultation

53 (1) A collective agreement must contain a provision requiring a consultation committee to be established if a party makes a written request for one after the notice to commence collective bargaining is given or after the parties begin collective bargaining.

(2) The consultation committee provision must provide that the parties consult regularly during the term of the agreement about issues relating to the workplace that affect the parties or any employee bound by the agreement.

(3) If the collective agreement does not contain the provisions described in subsections (1) and (2), it is deemed to contain the following consultation committee provision:

On the request of either party, the parties must meet at least once every 2 months until this agreement is terminated, for the purpose of discussing issues relating to the workplace that affect the parties or any employee bound by this agreement.

(4) The purpose of the consultation committee is to promote the cooperative resolution of workplace issues, to respond and adapt to changes in the economy, to foster the development of work related skills and to promote workplace productivity.

(5) The associate chair of the Mediation Division must on the request of either party appoint a facilitator to assist in developing a more cooperative relationship between the parties.

Adjustment plan

54 (1) If an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or

APPENDIX "B"

security of employment of a significant number of employees to whom a collective agreement applies,

(a) the employer must give notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and

(b) after notice has been given, the employer and trade union must meet, in good faith, and endeavour to develop an adjustment plan, which may include provisions respecting any of the following:

(i) consideration of alternatives to the proposed measure, policy, practice or change, including amendment of provisions in the collective agreement;

(ii) human resource planning and employee counselling and retraining;

(iii) notice of termination;

(iv) severance pay;

(v) entitlement to pension and other benefits including early retirement benefits;

(vi) a bipartite process for overseeing the implementation of the adjustment plan.

(2) If, after meeting in accordance with subsection (1), the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.

(2.1) If, after meeting in accordance with subsection (1), the parties have not agreed to an adjustment plan, either party may refer any outstanding issues to the associate chair of the Mediation Division for the appointment of a mediator to assist the parties to conclude an adjustment plan.

(2.2) If, after mediation, the parties have not agreed to an adjustment plan, the mediator may make recommendations for the terms of an adjustment plan.

(2.3) The parties must provide the information the mediator requests concerning the change, its impacts and the parties' efforts to develop an adjustment plan.

(3) Subsections (1), (2), (2.1), (2.2) and (2.3) do not apply to the termination of the employment of employees exempted by section 65 of the *Employment Standards Act* from the application of section 64 of that Act.

Division 3 — First Collective Agreement

First collective agreement

55 (1) Either party may apply to the associate chair of the Mediation Division for the appointment of a mediator to assist the parties in negotiating a first collective agreement, if a trade union certified as bargaining agent and an employer have bargained collectively to conclude their first collective agreement and have failed to do so.

(2) If an application is made under subsection (1) an employee must not strike or continue to strike, and the employer must not lock out or continue to lock out, unless a strike or lockout is subsequently authorized under subsection (6) (b) (iii).

(3) The associate chair must appoint a mediator within 5 days of receiving an application under subsection (1).

(4) An application under subsection (1) must include a list of the disputed issues and the position of the party making the application on those issues.

(5) Within 5 days of receiving the information referred to in subsection (4), the other party must give to the party making the application and to the associate chair a list of the disputed issues and the position of that party on those issues.

(6) If the first collective agreement is not concluded within 20 days of the appointment of the mediator, the mediator must report to the associate chair and recommend either or both of the following:

(a) the terms of the first collective agreement for consideration by the parties;

APPENDIX "B"

(b) a process for concluding the first collective agreement including one or more of the following:

- (i) further mediation by a person empowered to arbitrate any issues not resolved by agreement and to conclude the terms of the first collective agreement;
- (ii) arbitration by a single arbitrator or by the board, to conclude the terms of the first collective agreement;
- (iii) allowing the parties to exercise their rights under this Code to strike or lock out.

(7) If a remedial certification was granted, the mediator may consider the parties' conduct, prior to and following certification, when determining the recommended process under subsection 6(b).

(8) If the parties do not accept the mediator's recommended terms of settlement or if a first collective agreement is not concluded within 20 days of the report under subsection (6), the associate chair may direct a method set out in subsection (6) (b) for resolving the dispute and, if a remedial certification was granted, when making that direction may consider the parties' conduct, prior to and following certification.

(9) If the associate chair directs a method set out in subsection (6) (b) (i) or (ii), the parties must refrain from or cease any strike or lockout activity, and the terms of the collective agreement recommended or concluded under that subsection are binding on the parties.

Part 4.1

Repealed

55.1-55.26 [Repealed 2001-33-10.]

Part 5 — Strikes, Lockouts and Picketing

Definition

APPENDIX "B"

- 56** In this Part, "**perishable property**" includes property that
- (a) is imminently subject to spoilage, or
 - (b) may imminently become dangerous to life, health or other property.

Strikes and lockouts prohibited during term of collective agreement

- 57** (1) An employee bound by a collective agreement entered into before or after the coming into force of this Code must not strike during the term of the collective agreement, and a person must not declare or authorize a strike of those employees during that term.
- (2) An employer bound by a collective agreement entered into before or after the coming into force of this Code must not during the term of the collective agreement lock out an employee bound by the collective agreement.

Honouring of agreement

- 58** Every collective agreement must provide that there will be no strikes or lockouts so long as the agreement continues to operate and, if a collective agreement does not contain such a provision, it is deemed to contain the following provision:

There must be no strikes or lockouts so long as this agreement continues to operate.

Strikes and lockouts prohibited before bargaining and vote

- 59** (1) A person must not take a vote under section 60 or 61 on the question of whether to strike or on the question of whether to lock out until the trade union and the employer or their authorized representatives have bargained collectively in accordance with this Code.
- (2) A trade union must not declare or authorize a strike and an employer must not declare or cause a lockout, until
- (a) in the case of a trade union or an employee in the unit affected, either
 - (i) section 60 has been complied with, or

APPENDIX "B"

- (ii) a lawful lockout has occurred and has not been discontinued for a period longer than 72 hours, or
 - (iii) a lawful lockout has occurred for a period less than 72 hours and the employer has altered the terms and conditions of employment, or
- (b) in the case of an employer, either
 - (i) section 61 has been complied with, or
 - (ii) a lawful strike has occurred and has not been discontinued for a period longer than 72 hours.

Pre-strike vote and notice

- 60** (1) A person must not declare or authorize a strike and an employee must not strike until a vote as to whether to strike has been taken in accordance with the regulations by the employees in the unit affected, and the majority of those employees who vote have voted for a strike.
- (2) If on application by a person directly affected by a strike vote or an impending strike, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1), the board may make an order declaring the vote of no force or effect and directing that if another vote is conducted, the vote must be taken on the terms the board considers necessary or advisable.
- (3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected, if the vote favours a strike,
- (a) a person must not declare or authorize a strike, and an employee must not strike, except during the 3 months immediately following the date of the vote, and
 - (b) an employee must not strike unless
 - (i) the employer has been served with written notice by the trade union that the employees are going on strike,
 - (ii) written notice has been filed with the board,
 - (iii) 72 hours or a longer period directed under this section has elapsed from the time written notice was

APPENDIX "B"

- (A) filed with the board, and
 - (B) served on the employer, and
 - (iv) if a mediation officer has been appointed under section 74, 48 hours have elapsed from the time the trade union is informed by the associate chair that the mediation officer has reported to him or her, or from the time required under subparagraph (iii) of this paragraph, whichever is longer.
- (4) Despite subsection (3) (b) (iii), the board may direct a trade union to give more than 72 hours' notice of a strike, on application or on its own motion, for the protection of
- (a) perishable property, or
 - (b) other property or persons affected by perishable property.
- (5) When the board makes a direction under subsection (4), the board
- (a) must specify the length of the written notice required, and
 - (b) may specify terms it considers necessary or advisable.
- (6) If facilities, productions or services have been designated as essential services under Part 6 and a strike that affects those facilities, productions or services does not occur on the expiry of the 72 hour period referred to in subsection (3) (b) (iii) or the longer period specified under subsection (5), the trade union must give to the employer and to the board a new strike notice of at least 72 hours before commencing a strike.

Pre-lockout vote and notice

61 (1) If 2 or more employers are engaged in the same dispute with their employees, a person must not declare or authorize a lockout and an employer must not lock out his or her employees until a vote as to whether to lock out has been taken by all the employers in accordance with the regulations, and a majority of those employers who vote have voted for a lockout.

APPENDIX "B"

(2) If on application by a person directly affected by a lockout vote or an impending lockout, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1) or the regulations, the board may make an order declaring the vote of no force or effect and directing that if another vote is conducted the vote must be taken on the terms the board considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected,

- (a) if a vote is taken under subsection (1) and the vote favours a lockout, a person must not declare or authorize a lockout and an employer must not lock out his or her employees except during the 3 months immediately following the date of the vote, and

- (b) an employer must not lock out his or her employees unless

- (i) the trade union has been served with written notice by the employer that the employer is going to lock out his or her employees,

- (ii) written notice has been filed with the board,

- (iii) 72 hours or a longer period directed under this section has elapsed from the time written notice was

- (A) filed with the board, and

- (B) served on the trade union, and

- (iv) if a mediation officer has been appointed under section 74, 48 hours have elapsed from the time the employers are informed by the associate chair that the mediation officer has reported to him or her, or from the time required under subparagraph (iii) of this paragraph, whichever is longer.

(4) Despite subsection (3) (b) (iii), the board may direct an employer to give more than 72 hours' notice of a lockout, on application or on its own motion, for the protection of

- (a) perishable property, or

APPENDIX "B"

- (b) other property or persons affected by perishable property.
- (5) If the board makes a direction under subsection (4), the board
 - (a) must specify the length of the written notice required, and
 - (b) may specify terms it considers necessary or advisable.
- (6) If facilities, productions or services have been designated as essential services under Part 6 and a lockout that affects those facilities, productions or services does not occur on the expiry of the 72 hour period referred to in subsection (3) (b) (iii) or the longer period specified under subsection (5), the employer must give to the board and the trade union a new lockout notice of at least 72 hours before commencing a lockout.

Continuation of benefits

- 62** (1) If employees are lawfully on strike or lawfully locked out, their health and welfare benefits, other than pension benefits or contributions, normally provided directly or indirectly by the employer to the employees must be continued if the trade union tenders payment to the employer or to any person who was before the strike or lockout obligated to receive the payment
- (a) in an amount sufficient to continue the employees' entitlement to the benefits, and
 - (b) on or before the regular due date of that payment.
- (2) If subsection (1) is complied with
- (a) the employer or other person referred to in that subsection must accept the payment tendered by the trade union, and
 - (b) a person must not deny to an employee a benefit described in that subsection, including coverage under an insurance plan, for which the employee would otherwise be eligible, because the employee is participating in a lawful strike or is lawfully locked out.
- (3) A trade union and an employer may agree in writing to specifically exclude the operation of this section.

APPENDIX "B"

Rights preserved

63 (1) This Code must not be construed to prohibit the suspension or discontinuance by an employer of operations in the employer's establishment, in whole or in part, for a cause not constituting a lockout.

(2) The burden of proof that operations in his or her establishment are or were suspended or discontinued for a cause not constituting a lockout is on the employer.

(3) An act or omission by a trade union or by the employees does not constitute a strike if

(a) it is required for the safety or health of those employees, or

(b) it is permitted under a provision of a collective agreement by which an employer agrees that employees within the bargaining unit covered by the collective agreement are not required to work in association with persons who are not members of

(i) the trade union representing the bargaining unit, or

(ii) another trade union contemplated by the collective agreement.

Information

64 A trade union or other person may, at any time and in a manner that does not constitute picketing as defined in this Code, communicate information to a person, or publicly express sympathy or support for a person, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by that person.

Picketing

65 (1) In this section:

"ally" means a person who, in the board's opinion, in combination, in concert or in accordance with a common understanding with an

APPENDIX "B"

employer assists the employer in a lockout or in resisting a lawful strike;

"common site picketing" means picketing at or near a site or place where

(a) 2 or more employers carry on operations, employment or business, and

(b) there is a lockout or lawful strike by or against one of the employers referred to in paragraph (a), or one of them is an ally of an employer by or against whom there is a lockout or lawful strike.

(2) A person who, for the benefit of a struck employer, or for the benefit of an employer who has locked out, performs work, supplies goods or furnishes services of a nature or kind that, except for a lockout or lawful strike, would be performed, supplied or furnished by the employer, must be presumed by the board to be the employer's ally unless he or she proves the contrary.

(3) A trade union, a member or members of which are lawfully on strike or locked out, or a person authorized by the trade union, may picket at or near a site or place where a member of the trade union performs work under the control or direction of the employer if the work is an integral and substantial part of the employer's operation and the site or place is a site or place of the lawful strike or lockout.

(4) The board may, on application and after making the inquiries it requires, permit picketing

(a) at or near another site or place that the employer causing a lockout or whose employees are lawfully on strike is using to perform work, supply goods or furnish services for the employer's own benefit that, except for the lockout or strike, would be performed, supplied or furnished at the site or place where picketing is permitted by subsection (3), or

(b) at or near the place where an ally performs work, supplies goods or furnishes services for the benefit of a struck employer, or for the benefit of an employer who has locked out,

APPENDIX "B"

but the board must not permit common site picketing unless it also makes an order under subsection (6) defining the site or place and restricting the picketing in the manner referred to in that subsection.

(5) In subsection (4), "**employer**" means the person whose operation may be lawfully picketed under subsection (3).

(6) The board may, on application or on its own motion, make an order defining the site or place at which picketing that is permitted by subsection (3), or that is permitted under subsection (4), may take place.

(7) If the picketing referred to in subsection (6) is common site picketing, the board must restrict the picketing in such a manner that it affects only the operation of the employer causing the lockout or whose employees are lawfully on strike, or an operation of an ally of that employer, unless it is not possible to do so without prohibiting picketing that is permitted by subsection (3) or (4), in which case the board may regulate the picketing as it considers appropriate.

(8) For the purpose of this section, divisions or other parts of a corporation or firm, if they are separate and distinct operations, must be treated as separate employers.

Actions

66 No action or proceeding may be brought for

- (a) petty trespass to land to which a member of the public ordinarily has access,
- (b) interference with contractual relations, or
- (c) interference with the trade, business or employment of another person resulting in a reduction in trade or business, impairment of business opportunity or other economic loss

arising out of strikes, lockouts or picketing permitted under this Code or attempts to persuade employees to join a trade union made at or near but outside entrances and exits to an employer's workplace.

Picketing restricted

APPENDIX "B"

67 Except as provided in this Code, a person must not picket in respect of a matter or dispute to which this Code applies.

Replacement workers

68 (1) During a lockout or strike authorized by this Code an employer must not use the services of a person, whether paid or not,

- (a) who is hired or engaged after the earlier of the date on which the notice to commence collective bargaining is given and the date on which bargaining begins,
- (b) who ordinarily works at another of the employer's places of operations,
- (c) who is transferred to a place of operations in respect of which the strike or lockout is taking place, if he or she was transferred after the earlier of the date on which the notice to commence bargaining is given and the date on which bargaining begins, or
- (d) who is employed, engaged or supplied to the employer by another person,

to perform

- (e) the work of an employee in the bargaining unit that is on strike or locked out, or
- (f) the work ordinarily done by a person who is performing the work of an employee in the bargaining unit that is on strike or locked out.

(2) An employer must not require any person who works at a place of operations in respect of which the strike or lockout is taking place to perform any work of an employee in the bargaining unit that is on strike or is locked out without the consent of the person.

(3) An employer must not

- (a) refuse to employ or continue to employ a person,
- (b) threaten to dismiss a person or otherwise threaten a person,
- (c) discriminate against a person in regard to employment or a term or condition of employment, or

APPENDIX "B"

(d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of the person's refusal to perform any or all of the work of an employee in the bargaining unit that is on strike or locked out.

Other acts not actionable

69 An act done by 2 or more persons acting by agreement or combination, if done in contemplation or furtherance of a labour dispute, is not actionable unless it would be wrongful without an agreement or combination.

Declaratory opinion

70 (1) If, on the complaint by an interested person, the board is satisfied that a declaration by or on behalf of a trade union or employer, or an agreement or combination between one or more employers and one or more trade unions, or 2 or more trade unions, is substantially affecting trade and commerce in a commodity or service or is substantially affecting the business, operations or purposes of the complainant, the board may, in its discretion, issue a declaratory opinion that

- (a) the declaration, agreement or combination is void for all purposes,
- (b) the declaration, agreement or combination is unenforceable in specified circumstances or for a specified period of time, or
- (c) the declaration, agreement or combination is valid and enforceable.

(2) When the board issues a declaratory opinion under subsection (1) (a) or (b), it may make orders or take steps it considers advisable to ensure that persons affected by the declaration, agreement or combination are informed of the terms of the declaratory opinion.

(3) The board, in determining whether to issue a declaratory opinion under subsection (1), must consider

APPENDIX "B"

- (a) the extent to which the employment, business, operations, purposes or property of the complainant have been affected by the declaration, agreement or combination, and
- (b) the intent and purpose of this Part and the necessity for reasonable protection and advancement of a trade union or employer.

Refusal of order

71 The board may refuse to make an order under Part 9 in respect of a matter arising under this Part if it believes it is just and equitable to do so in view of the improper conduct of the person applying for the order.

Part 6 — Essential Services**Essential services**

- 72** (1) If a dispute arises after collective bargaining has commenced, the chair may, on the chair's own motion or on application by either of the parties to the dispute,
- (a) investigate whether or not the dispute poses a threat to
 - (i) the health, safety or welfare of the residents of British Columbia, and
 - (b) report the results of the investigation to the Minister.
- (2) If the Minister
- (a) after receiving a report of the chair respecting a dispute, or
 - (b) on the Minister's own initiative

considers that a dispute poses a threat to the health, safety or welfare of the residents of British Columbia, the Minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.

APPENDIX "B"

(3) When the Minister makes a direction under subsection (2) the associate chair of the Mediation Division may appoint one or more mediators to assist the parties to reach an agreement on essential services designations.

(4) A mediator appointed under subsection (3) must report to the associate chair of the Mediation Division within 15 days of his or her appointment or within any additional period agreed on by the parties.

(5) The board

(a) must within 30 days of receiving the report of a mediator, designate facilities, productions and services as essential services under subsection (2), and

(b) may, in its discretion, incorporate any recommendations made by the mediator into the designation under that subsection.

(6) If the Minister makes a direction under subsection (2) before a strike or lockout has commenced, the parties must not strike or lock out until the designation of essential services is made by the board.

(7) If the Minister makes a direction under subsection (2) after a strike or lockout has commenced, the parties may continue the strike or lockout subject to any designation of essential services by the board.

(8) If the board designates facilities, productions and services as essential services, the employer and the trade union must supply, provide or maintain in full measure those facilities, productions and services and must not restrict or limit a facility, production or service so designated.

(9) A designation made under this section may be amended, varied or revoked and another made in its place, and despite section 135 the board may, in its discretion, on application or on its own motion, decline to file its order in a Supreme Court registry.

Return to work

73 (1) Every employer, trade union or employee affected by a direction or designation made under section 72 with respect to the dispute must comply with the direction or designation.

APPENDIX "B"

(2) If a designation is made under section 72, the relationship between the employer and his or her employees, while the designation remains in effect, must be governed by the terms and conditions of the collective agreement last in force between the employer and the trade union except as that collective agreement is amended by the board to the extent necessary to implement the designation of essential services.

(3) The board may under section 72 designate facilities, productions and services supplied, provided or maintained by employees of the employer who are represented by another trade union that is not involved in a collective bargaining dispute with the employer.

Part 7 — Mediation and Disputes Resolution

Division 1 — Mediation and Fact Finding

Mediation officer and services

74 (1) The associate chair of the Mediation Division may appoint a mediation officer if

- (a) notice has been given to commence collective bargaining between a trade union and an employer,
- (b) either party makes a written request to the associate chair to appoint a mediation officer to confer with the parties to assist them to conclude a collective agreement or a renewal or revision of it, and
- (c) the request is accompanied by a statement of the matters the parties have or have not agreed on in the course of collective bargaining.

(2) A person appointed as a mediation officer need not be an employee of the board.

(3) The Minister may at any time during the course of collective bargaining between an employer and a trade union, if he or she considers that the appointment is likely to facilitate the making of a collective agreement, appoint a mediation officer to confer with the parties.

APPENDIX "B"

(4) If a mediation officer is appointed to confer with the parties, the mediation officer must, no later than 10 days after first meeting with the parties or 20 days after the mediation officer's appointment, whichever is sooner, or such longer period as the parties agree on or as the Minister directs, report to the associate chair setting out the matters on which the parties have or have not agreed and such other information as the mediation officer considers relevant to the collective bargaining between the parties.

(5) If either party so requests of the associate chair, or if the Minister so directs, the mediation officer must provide to the associate chair and the parties a report concerning the collective bargaining dispute, and the report may include recommended terms of settlement.

(6) Parties conferring with a mediation officer under this section must provide the information that the mediation officer requests concerning their collective bargaining.

Notice of strike or lockout

75 (1) If a strike or lockout has commenced, the trade union or employer commencing the strike or lockout must immediately inform the chair in writing specifying the date the strike or lockout commenced.

(2) The chair must inform the Minister of strikes and lockouts that occur or are threatened.

Special mediator

76 (1) The Minister may appoint a special mediator, and specify terms of reference for the special mediator, to assist the parties in settling the terms and conditions of a collective agreement or a renewal or revision of a collective agreement.

(2) The Minister may terminate the appointment of a special mediator.

(3) The special mediator must keep the Minister informed as to the progress of the mediation.

APPENDIX "B"

(4) The special mediator, in carrying out his or her duties under this Code, has the powers and protection set out in sections 145.1 to 145.4.

Fact finding

77 (1) The associate chair may appoint a fact finder in respect of a collective bargaining dispute, and the associate chair must give written notice of the appointment to each of the parties to the dispute.

(2) Within 7 days after receiving the notice of the appointment of the fact finder, each party must give written notice to the fact finder and the other party setting out all matters the parties have agreed on for inclusion in a collective agreement and all matters remaining in dispute between the parties.

(3) If a party fails to comply with subsection (2), the fact finder may make a determination of the matters mentioned in subsection (2).

(4) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report to the associate chair setting out the matters agreed on by the parties for inclusion in a collective agreement and the matters remaining in dispute between the parties.

(5) The fact finder may include in his or her report his or her findings in respect of any matter that he or she considers relevant to the making of a collective agreement between the parties.

(6) The associate chair must provide a copy of the fact finder's report to the parties, and may make it public if the associate chair considers it advisable to do so.

Last offer votes

78 (1) Before the commencement of a strike or lockout, the employer of the employees in the affected bargaining unit may request that a vote of those employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, and if the employer requests that a vote be taken, the

APPENDIX "B"

associate chair must direct that a vote of those employees to accept or reject the offer be held in a manner the associate chair directs.

(2) Before the commencement of a strike or lockout, the trade union that is certified as the bargaining agent of the employees in the affected bargaining unit may, if more than one employer is represented in the dispute by an employers' organization, request that a vote of those employers be taken as to the acceptance or rejection of the offer of the trade union last received by the employers' organization in respect of all matters remaining in dispute between the parties, and if the trade union requests that a vote be taken, the associate chair must direct that a vote of those employers to accept or reject the offer be held in a manner the associate chair directs.

(3) If a vote under this section favours the acceptance of a final offer, an agreement is thereby constituted between the parties.

(4) The holding of a vote or a request for the taking of a vote under subsection (1) or (2) does not extend any time limits or periods referred to in section 60 or 61.

(5) Only one vote in respect of the same dispute may be held under subsection (1) and only one vote in respect of the same dispute may be held under subsection (2).

(6) If, during a strike or lockout, the Minister considers that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith in a manner the Minister directs.

(7) If, during a strike or lockout, more than one employer is represented in the dispute by an employers' organization and the Minister considers that it is in the public interest that the employers comprising the employers' organization be given the opportunity to accept or reject the offer of the bargaining agent for the employees last received by the employers' organization in respect of all matters remaining in dispute between the parties, the Minister may direct that

a vote of those employers to accept or reject the offer be held forthwith in a manner the Minister directs.

Division 2 — Commissions and Councils

Industrial inquiry commission

79 (1) The Minister may, on application or on his or her own motion, make or cause to be made inquiries considered advisable respecting labour relations matters, and subject to this Code and regulations, may do the things he or she considers necessary to maintain or secure labour relations stability and promote conditions favourable to settlement of disputes.

(2) For any of the purposes of subsection (1), or if in an industry a dispute between employers and employees exists or is likely to arise, the Minister may refer the matter to an industrial inquiry commission for investigation and report.

(3) An industrial inquiry commission consists of one or more members appointed by the Minister.

(4) The Minister must furnish the industrial inquiry commission with a statement of the matters to be inquired into, and if an inquiry involves particular persons or parties, must advise them of the appointment of the industrial inquiry commission.

(5) An industrial inquiry commission must inquire into the matters referred to it by the Minister and endeavour to carry out its terms of reference, and if a settlement is not effected in the meantime, must report the result of its inquiries and its recommendations to the Minister within 14 days after its appointment or within a further time the Minister specifies.

(6) On receipt of a report of an industrial inquiry commission relating to a dispute between employers and employees, the Minister must furnish a copy to each of the parties affected and must publish it in the manner considered advisable.

(7) The members of an industrial inquiry commission have the powers and protection set out in sections 145.1 to 145.4.

(8) If either before or after the report is made the parties agree in writing to accept the report in respect of the matters referred to the

APPENDIX "B"

industrial inquiry commission, the parties are bound by the report in respect of those matters.

Industry councils

80 The Minister may, on application by an employer or trade union, on motion of the board, or on his or her own motion, direct the board to assist the parties to establish industry councils which may

(a) recommend measures to achieve more efficient collective bargaining and procedures for settling disputes,

(b) identify industry or sector issues, skills and training needs, health and safety related issues, competitive and productivity challenges,

(c) develop labour market information and marketing initiatives, and

(d) make any recommendations necessary to advance the industry or sector.

Part 8 — Arbitration Procedures**Division 1 — Definitions and Purpose****Definitions**

81 In this Part:

"arbitration board" includes

- (a) a single arbitrator, or
- (b) another tribunal or body appointed or constituted under this Part or a collective agreement;

"arbitration bureau" means the Collective Agreement Arbitration Bureau continued under this Part;

"director" means the director of the arbitration bureau;

"issue" means, in respect of an award, to make and publish the award to the parties to the arbitration;

APPENDIX "B"

"settlement officer" means an employee appointed under the *Public Service Act* who is appointed as a settlement officer by the director.

Purpose of Part

82 (1) It is the purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.

(2) An arbitration board, to further the purpose expressed in subsection (1), must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and must apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

Division 2 — Collective Agreement Arbitration Bureau**Collective Agreement Arbitration Bureau**

83 (1) The Collective Agreement Arbitration Bureau is continued consisting of a director designated by the chair and other employees of the board designated by the director.

(2) The director must establish and maintain a register of arbitrators.

(3) The Minister must appoint a joint advisory committee consisting of

- (a) 2 persons representative of trade unions,
- (b) 2 persons representative of employers,
- (c) 2 persons representative of arbitrators, and
- (d) the director, who is the chair of the committee.

(4) The joint advisory committee must advise the director on

- (a) the training and education of labour arbitrators and settlement officers,
- (b) research and publication of information concerning labour arbitrations, and

APPENDIX "B"

(c) the establishment and maintenance of a register of arbitrators.

Division 3 — Collective Agreement Provisions

Dismissal or arbitration provision

84 (1) Every collective agreement must contain a provision governing dismissal or discipline of an employee bound by the agreement, and that or another provision must require that the employer have a just and reasonable cause for dismissal or discipline of an employee, but this section does not prohibit the parties to a collective agreement from including in it a different provision for employment of certain employees on a probationary basis.

(2) Every collective agreement must contain a provision for final and conclusive settlement without stoppage of work, by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable.

(3) If a collective agreement does not contain a provision referred to in subsections (1) and (2), the collective agreement is deemed to contain those of the following provisions it does not contain:

(a) the employer must not dismiss or discipline an employee bound by this agreement except for just and reasonable cause;

(b) if a difference arises between the parties relating to the dismissal or discipline of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including a question as to whether a matter is arbitrable, either of the parties, without stoppage of work, may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference to arbitration, and the parties must agree on a single arbitrator, the arbitrator must hear and determine the difference and issue

APPENDIX "B"

a decision, which is final and binding on the parties and any person affected by it.

Unworkable provision

85 (1) If in the Minister's opinion a part of the arbitration provision in a collective agreement, including the method of appointing the arbitration board, is inadequate, or the provision set out in section 84 (3) (b) is alleged by either party to be unsuitable, the Minister may at the request of either party modify the provision so long as it conforms with section 84 (1) and (2).

(2) Until modified under subsection (1), the arbitration provision in the collective agreement, or in section 84 (3) (b), as the case may be, applies.

Failure to appoint arbitration board

86 (1) Despite section 85, if there is a failure to appoint or constitute an arbitration board under a collective agreement or under section 84 (3), the director, at the request of either party, must make the appointments necessary to constitute an arbitration board, and a person so appointed by the director is deemed to be appointed in accordance with the collective agreement, or under section 84 (3), as the case may be.

(2) Nothing in a collective agreement is to be construed as requiring the director to constitute an arbitration board consisting of more than a single arbitrator.

Settlement officer

87 (1) Either party to the collective agreement, after the completion of the steps of the grievance procedure, may request the director in writing to appoint a settlement officer to confer with the parties to assist them to settle the difference, if the request is accompanied by a statement of the difference to be settled.

(2) If a settlement officer is appointed under subsection (1), the settlement officer must, within 5 days of the appointment or within such further time as the director may allow,

APPENDIX "B"

- (a) inquire into the difference,
 - (b) endeavour to assist the parties in settling the difference, and
 - (c) report to the director on the results of the inquiry and the success of the settlement effort.
- (3) When the director receives a report under subsection (2) and the parties have not settled the difference, the director may refer the difference back to the parties.

Action by Labour Relations Board

- 88** If a difference arises during the term of a collective agreement, and in the board's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties, the board may, on application by either party to the difference, or on its own motion,
- (a) inquire into the difference and make recommendations for settlement, and
 - (b) if the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement or, whether or not the difference is arbitrable, request the Minister to appoint a special officer.

Authority of arbitration board

- 89** (1) For the purposes set out in section 82, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limitation, may
- (a) make an order setting the monetary value of an injury or loss suffered by an employer, trade union or other person as a result of a contravention of a collective agreement, and directing a person to pay a person all or part of the amount of that monetary value,
 - (b) order an employer to reinstate an employee dismissed in contravention of a collective agreement,

APPENDIX "B"

- (c) order an employer or trade union to rescind and rectify a disciplinary action that was taken in respect of an employee and that was imposed in contravention of a collective agreement,
- (d) determine that a dismissal or discipline is excessive in all circumstances of the case and substitute other measures that appear just and equitable,
- (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement,
- (f) dismiss or reject an application or grievance or refuse to settle a difference, if in the arbitration board's opinion, there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference,
- (g) interpret and apply any Act intended to regulate the employment relationship of the persons bound by a collective agreement, even though the Act's provisions conflict with the terms of the collective agreement, and
- (h) encourage settlement of the dispute and, with the agreement of the parties, the arbitration board may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) The arbitration board must within 30 days of appointment conduct a case management conference to schedule the timely exchange of particulars and reliance documents, schedule hearings date(s) and encourage early mediation.

Fees and costs

90 (1) Unless the provision required under section 84 or 85 provides otherwise, each party to an arbitration under section 84, 85, 104 or 105 must bear

APPENDIX "B"

(a) its own fees, expenses and costs,
(b) the fees and expenses of a member of an arbitration board that is appointed by or on behalf of that party, and
(c) equally the fees and expenses of the chair of the arbitration board or a single arbitrator, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.

(2) If the director appoints a single arbitrator or the chair of an arbitration board under section 86, each party must pay 1/2 the remuneration and expenses of the person appointed, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.

(3) If the director appoints a member of an arbitration board under section 86 on the failure of one of the parties to make the appointment, that party must pay the remuneration and expenses of the person appointed.

Delay by arbitration board

91 If a difference has been submitted to arbitration and a party to the arbitration complains to the Minister that the arbitration board has failed to render a decision in a reasonable time, the Minister may, after consulting the parties and the arbitration board, issue an order the Minister considers necessary to ensure a decision will be rendered without further undue delay.

Powers of arbitration board

92 (1) An arbitration board may
(a) determine its own procedure,
(b) receive and accept evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law,

APPENDIX "B"

- (c) determine prehearing matters and issue prehearing orders,
- (d) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where
 - (i) work is or has been done or commenced by employees,
 - (ii) an employer carries on business, or
 - (iii) anything is taking place or has taken place concerning a matter referred to the arbitration board under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, and interrogate any person in relation to it, and

- (e) authorize a person to do anything the arbitration board may do under paragraph (d) and report to the arbitration board in the presence of the parties or their representatives as a witness subject to cross examination by each party.

(2) The jurisdiction of an arbitration board to hear and determine a difference does not cease until the matters in dispute have been finally resolved.

Summons to testify

93 (1) An arbitration board may, at the request of a party to the arbitration or on its own motion, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things it considers requisite to a full consideration of matters before the arbitration board, in the same manner as a court of record in civil cases.

(2) If an arbitration board consists of more than one person, the chair of the arbitration board may exercise all the authority of the arbitration board under subsection (1).

Decision of arbitration board

APPENDIX "B"

94 If a collective agreement provides for submission of a difference to an arbitration board consisting of more than one arbitrator, the decision of a majority of the arbitrators is the decision of the arbitration board, but if there is no majority decision, the decision of the chair of the arbitration board is the decision of the arbitration board.

Effect of decision

95 The decision of an arbitration board is binding

- (a) on the parties,
- (b) in the case of a collective agreement between a trade union and an employers' organization, on the employers who are bound by the agreement and who are affected by the decision,
- (c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, on the council, the constituent trade unions in it and the employer or employers who are covered by the agreement and who are affected by the decision, and
- (d) on the employees who are bound by the collective agreement and who are affected by the decision,

and they must comply in all respects with the decision.

Filing decision

96 An arbitration board must, within 10 days of issuing an award, file a copy of it with the director who must make the award available for public inspection.

Act not to apply

97 The *Arbitration Act* does not apply to an arbitration under this Code.

Reference to Labour Relations Board

APPENDIX "B"

98 An arbitration board may, at any stage of an arbitration, refer to the board for a binding opinion and decision a question of labour relations policy or interpretation of this Code arising in the course of the arbitration.

Appeal jurisdiction of Labour Relations Board

99 (1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred to it back to the arbitration board, stay the proceedings before the arbitration board or substitute the decision or award of the board for the decision or award of the arbitration board, on the ground that

- (a) a party to the arbitration has been or is likely to be denied a fair hearing, or
- (b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.

(2) An application to the board under subsection (1) must be made in accordance with the regulations.

Appeal jurisdiction of Court of Appeal

100 On application by a party affected by a decision or award of an arbitration board, the Court of Appeal may review the decision or award if the basis of the decision or award is a matter or issue of the general law unrelated to the collective agreement, the labour relations context or related factual determinations and not included in section 99 (1).

Decision final

101 Except as provided in this Part, the decision or award of an arbitration board under this Code is final and conclusive and is not open to question or review in a court on any grounds whatsoever, and proceedings by or before an arbitration board must not be restrained by injunction, prohibition or other process or proceeding in a court and are not removable by certiorari or otherwise into a court.

Enforcement

- 102** (1) If a party or a person has failed or neglected to comply with the decision of an arbitration board, a party or person affected by the decision may, after the expiration of 14 days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the Supreme Court registry a copy of the decision in the prescribed form.
- (2) A decision filed under subsection (1) must be entered as if it were a decision of the court, and on being entered is deemed, for all purposes except an appeal from it, to be an order of the Supreme Court and enforceable as an order of the court.

Repealed

- 103** [Repealed 1997-27-24.]

Division 4 — Expedited Arbitration**Expedited arbitration**

- 104** (1) A party to a collective agreement may refer a difference respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable, to the director for resolution by expedited arbitration.
- (2) No difference may be referred to the director under this section unless
- (a) the grievance procedure under the collective agreement has been exhausted, and
 - (b) the application is made within 15 days of the completion of the steps of the grievance procedure preceding a reference to arbitration.
- (3) No difference under a collective agreement may be referred to the director under this section if
- (a) the difference has been referred to arbitration under the collective agreement by the party who wishes to refer it under this section, or

APPENDIX "B"

(b) the time, if any, stipulated in or permitted under the collective agreement for referring the difference to arbitration has expired.

(4) If a difference is referred to the director within the time periods specified in this section, the director

- (a) must appoint an arbitrator who is available to hear and determine the matter arising out of the difference in accordance with the timelines established in subsection (6),
- (b) may, if a party so requests, appoint a settlement officer to assist the parties in settling the grievance before the hearing.

(5) If a settlement officer is appointed under subsection (4), the settlement officer must, within 5 days after the appointment or within such further time as the director may allow,

- (a) inquire into the difference,
- (b) endeavour to assist the parties in settling the difference, and
- (c) report to the director on the results of the inquiry and the success of the settlement effort.

(6) The arbitrator appointed under subsection (4) must

(a) within 7 days of appointment conduct a case management conference to schedule the timely exchange of particulars and reliance documents, schedule the hearing and explore early mediation,

(b) schedule the arbitration promptly and conclude the arbitration within 90 days of the day on which the difference was referred to the director,

(c) subject to subsection (7), issue brief written reasons, not to exceed 7 pages, within 30 days of the conclusion of the hearing.

(6.1) The arbitrator for the purpose of providing a final and conclusive settlement of the dispute within the 90 day time limit, in addition to the authority under sections 82 and 89, may order

- (a) the hearing date(s),
- (b) a brief written summary of each party's position be exchanged in advance,

APPENDIX "B"

- (c) an agreed statement of facts be prepared and/or limited *viva voce* evidence,
 - (d) a fixed time period for the presentation of any evidence and argument,
 - (e) limited reference to legal or other authorities, and
 - (f) any other step or procedure designed to facilitate an expedited decision in the proceeding.
- (7) If jointly requested to do so by the parties to the difference, the arbitrator appointed under subsection (4) must, if possible, issue a an oral decision within one day after the conclusion of the hearing and must, if requested by the parties, issue brief written reasons, not to exceed 7 pages, within the time specified in subsection (6).
- (8) An arbitrator appointed under subsection (4) has all the power and jurisdiction of an arbitrator appointed under this Code or the collective agreement between the parties to the difference.
- (9) This section applies to every party to a collective agreement and every person bound by a collective agreement, despite any provision in the collective agreement.
- (10) The other provisions of this Part apply to an arbitration under this section, with the modifications necessary to accommodate appointments and expedited processes under this section.

Consensual mediation-arbitration

- 105** (1) Despite any grievance or arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 84 (3), the parties to the collective agreement may, at any time, agree to refer one or more grievances under the collective agreement to a single mediator-arbitrator for the purpose of resolving the grievances in an expeditious and informal manner.
- (2) The parties must not refer a grievance to a mediator-arbitrator unless they have agreed on the nature of any issues in dispute.
- (3) The parties may jointly request the director to appoint a mediator-arbitrator if they are unable to agree on one, and the director may make the appointment.

APPENDIX "B"

- (4) Subject to subsection (5), a mediator-arbitrator appointed by the director must begin proceedings within 28 days after being appointed.
- (5) The director may direct a mediator-arbitrator to begin proceedings on such date as the parties jointly request.
- (6) The mediator-arbitrator must endeavour to assist the parties to settle the grievance by mediation.
- (7) If the parties are unable to settle the grievance by mediation, the mediator-arbitrator must endeavour to assist the parties to agree on the material facts in dispute and then must determine the grievance by arbitration.
- (8) When determining the grievance by arbitration, the mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as he or she considers appropriate.
- (9) The mediator-arbitrator must give a succinct decision within 21 days after completing proceedings on the grievance submitted to arbitration.
- (10) Sections 89 to 102 apply in respect of a mediator-arbitrator and a settlement, determination or decision under this section.

Division 5 — Special Officer**Special officer**

- 106** (1) If during the term of a collective agreement there is or is a likelihood of a dispute or difference arising out of or relating to the agreement, the Minister may in the interest of industrial peace appoint a special officer.
- (2) On his or her appointment, the special officer must investigate the dispute or difference and may
- (a) confer with the parties,
 - (b) hold hearings,
 - (c) make recommendations,
 - (d) make orders he or she considers necessary or advisable, including, without limitation, orders that the dispute or difference be submitted to a specified stage or

APPENDIX "B"

step in the grievance procedure under the collective agreement, or
(e) arbitrate the dispute or difference himself or herself.

Effect of order

107 An order made by a special officer is binding on all persons bound by the collective agreement and all parties to the dispute or difference.

Interim order

108 When a special officer makes an order on a matter not provided for by the collective agreement, or which differs from the provisions of the collective agreement, the order is binding on the parties to the dispute or difference for a period not exceeding 30 days.

Powers

109 For the purpose of investigating a dispute or difference or holding a hearing, a special officer has the powers and protection set out in sections 145.1 to 145.4 and may enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

- (a) work is or has been done or commenced by employees,
- (b) an employer carries on business, or
- (c) anything is taking place or has taken place concerning a matter referred to the special officer under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, or interrogate any person in relation to it.

Evidence

110 For the purpose of a hearing, a special officer
(a) may receive and accept the evidence and information on oath, affidavit or otherwise that, in his or her discretion,

APPENDIX "B"

he or she considers advisable, whether or not admissible as evidence in a court of law, and

(b) must determine his or her own procedure, but must give an opportunity to an interested party to present evidence and make representations.

Frequency of appointment

111 The Minister may not appoint a special officer more than twice in connection with the same dispute or difference.

Form of order

112 (1) An order of a special officer must be in writing signed by the special officer.

(2) The special officer must promptly

(a) deliver a copy of his or her order to the board, the employer and the trade union, and

(b) take reasonable steps to communicate the provisions of his or her order to persons bound or affected by it.

Notice of appointment to be sent to board

113 The Minister must send to the board a copy of every appointment of a special officer under section 106.

Other provisions to apply

114 The other provisions in this Part apply to matters arising under this Division.

Part 9 — Labour Relations Board**Labour Relations Board**

115 (1) The Labour Relations Board is continued consisting of a chair, vice chairs and as many members equal in number representative of employers and employees, respectively, as the Lieutenant Governor in Council considers proper, all of whom are to

APPENDIX "B"

be appointed by the Lieutenant Governor in Council after a merit-based process.

(2) For the purposes of subsection (1), the chair must be consulted before the appointment of vice chairs and members.

Application of *Administrative Tribunals Act*

115.1 The following provisions of the *Administrative Tribunals Act* apply to the board:

- (a) Part 1 [*Interpretation*];
- (b) Part 2 [*Appointments*];
- (c) Part 3 [*Clustering*];
- (d) section 34 (3) (b) and (4) [*tribunal power to compel witnesses and order disclosure*];
- (e) section 43 [*discretion to refer questions of law to court*];
- (f) section 46 [*notice to Attorney General if constitutional question raised in application*];
- (g) section 46.1 [*discretion to decline jurisdiction to apply the Human Rights Code*];
- (h) section 47 (1) (c) [*power to award costs*];
- (i) section 48 [*maintenance of order at hearings*];
- (j) section 49 [*contempt proceeding for uncooperative witness or other person*];
- (k) section 56 [*immunity protection for tribunal and members*];
- (l) section 57 [*time limit for judicial review*];
- (m) section 58 (1) and (2) [*standard of review with privative clause*];
- (n) section 59.1 [*surveys*];
- (o) section 59.2 [*reporting*];
- (p) section 60 (1) (g) to (i) and (2) [*power to make regulations*];
- (q) section 61 [*application of Freedom of Information and Protection of Privacy Act*].

Divisions and officers of the Labour Relations Board

- 116** (1) There are to be 2 divisions of the board called the Mediation Division and the Adjudication Division.
- (2) The chair may designate one or more vice chairs as associate chairs for either or both of the Mediation and Adjudication Divisions, and designate another vice chair as a registrar of the board.
- (3) If the associate chair of a division is absent or unable to act, or the office of an associate chair is vacant, the chair may act as associate chair or may assign a vice chair to act.
- (4) The chair may change an assignment or designation under this section.

Panels

- 117** (1) The chair may establish one or more panels of the board.
- (2) A panel has the power and authority of the board in matters referred to the panel by the chair or coming before it under rules of the board made under this Code.
- (3) Two or more panels may proceed with separate matters at the same time.
- (4) The chair may refer a matter that is before the board to a panel or a matter that is before a panel to the board or another panel.
- (5) A panel of the board consists of
- (a) the chair or a vice chair,
 - (b) the chair and 2 or more vice chairs,
 - (c) 3 or more vice chairs,
 - (d) 3 or more vice chairs, and members, equal in number, representative of employers and employees respectively,
 - (e) the chair or a vice chair, and one member representative of employees and one member representative of employers, or
 - (f) the chair or a vice chair, and members, equal in number, representative of employers and employees respectively.
- (6) The chair may terminate an appointment to a panel and may fill any vacancy on a panel.

Quorum

118 (1) The board or a panel of the board must not proceed with a matter unless a quorum is present and remains present throughout the proceeding.

(2) A quorum of the board consists of the chair or a vice chair, and members, equal in number, representative of employers and employees respectively.

(3) A quorum of a panel consists of the chair or the vice chair, if appointed under section 117 (5) (a), or all members of the panel, including the chair or vice chair.

Proceedings

119 (1) The chair must preside at proceedings of the board and of all panels of which he or she is a member, and a vice chair must preside over all other panels.

(2) The decision of a majority of the members of the board or of a panel present at a proceeding is the decision of the board or panel, but if there is no majority, the decision of the chair or presiding vice chair governs.

Question of law

120 The chair may establish a panel to which the board or another panel may refer a question of law respecting the interpretation of this Code, and its ruling is binding on the board or on the other panel.

Delegation

121 (1) The chair may exercise any power or perform any duty or function of the board, an associate chair or member of the board.

(2) The chair may delegate to the associate chairs, the registrar or one or more of the other members a power, duty or function of the board or of the director, except the power under section 128 (2).

Employees of the board

APPENDIX "B"

122 (1) The board may, despite the *Public Service Act*, employ a secretary and other officers and employees it considers necessary for the purposes of this Code, and may determine their duties, conditions of employment and remuneration.

(2) This Code and the *Public Service Labour Relations Act* do not apply to the members of the board or the secretary, or the officers and employees of the board.

(3) The chair must designate an employee employed under subsection (1) as the information officer to advise the public with respect to this Code and its application to labour relations in British Columbia.

Public education**123**

(1) The board must prepare a poster, available online, containing the following information relating to

- (a) the rights of employees
 - (i) to join a union and participate in its lawful activities including discussing and engaging in organizing during non-working time,
 - (ii) to apply for certification, to sign applications for membership in a union, to vote freely in a certification vote, to participate in collective bargaining, and
 - (iii) to engage in lawful actions under the *Code*.
- (b) the obligations of employers or persons acting on their behalf
 - (i) to recognize a certified union as the exclusive bargaining agent for all employees in the bargaining unit,
 - (ii) not to interfere with the formation, selection or administration of the union,
 - (iii) not to refuse to employ or continue to employ an employee or discriminate against an employee because that employee is a member of a union or is participating in organizing activities,

APPENDIX "B"

- (iv) not to threaten to or impose any penalty or reward on an employee to compel or induce them from participating in organizing,
 - (v) not to fire, demote or transfer employees or take any adverse action because they have joined a union or taken part in organizing activities,
 - (vi) not to threaten to close a business or otherwise retaliate against employees for engaging in organizing activities, and
 - (vii) to bargain in good faith with the Union following certification.
- (c) the obligations of a union or persons acting on behalf of a union not to threaten, intimidate or coerce employees to compel or induce employees to become or refrain from becoming a union member.
- (d) the contact information for the board including its website and telephone number
- (2) The board may require an employer to post the poster in a conspicuous location or locations in the work place.

Evidence

- 124** (1) The board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law.
- (2) The board may request and receive a report from a person it appoints to investigate an application or to investigate and attempt to settle a dispute under this Code or a collective agreement, and, despite section 146 (3), the board must disclose the report to the parties.
- (3) Information relating to membership or any record that may disclose whether a person is or is not a member of a trade union produced in a proceeding before the board is for the exclusive use of the board and its representatives.

APPENDIX "B"

(4) Except with the consent of the board, a person must not disclose whether a person is or is not a member of a trade union.

Summons and discovery of documents

125 On the recommendation of an officer appointed under section 14, 87 or 104 (4) (c), or on its own motion, the board may summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the officer or the board considers necessary to a full investigation and consideration of matters within the board's jurisdiction in the same manner as a court of record in civil cases.

Practice and procedure

126 (1) The board must determine its own practice and procedure, but must give full opportunity to the parties to a proceeding to present evidence and make submissions.

(2) The board, subject to the Minister's approval, may make rules governing its practice and procedure and the exercise of its powers and establish forms it considers advisable.

Offices of the board

127 (1) The principal office of the board must be at or near Vancouver, and the board and panels of the board must sit at the places the chair decides.

(2) Documents may be filed with the board at its principal office or at other offices throughout British Columbia designated for that purpose by the chair.

Timing and publication of decisions

128 (1) The board must render its decision on a complaint or application

(a) if a time period has been prescribed by the Minister under section 159.1 (a), within the prescribed time period, and

APPENDIX "B"

(b) if no time period has been prescribed, within a reasonable period of time.

(2) The chair may, before or after a prescribed time period expires, extend the time period referred to in subsection (1) (a) for a specific case

(a) in the circumstances established under section 159.1

(b), or

(b) in other circumstances that the chair considers exceptional.

(3) The board must make all its decisions in proceedings under this Code available in writing for publication.

Oath of office

129 A member of the board, before acting as a member, must take and sign before a notary public or commissioner for taking affidavits for British Columbia, and file with the Minister, an oath or affirmation of office in the following form:

I, _____, do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of chair (or vice chair or member) of the Labour Relations Board, and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the board.

Repealed

130-131 [Repealed 2003-47-38.]

General guidelines

132 (1) The board may formulate general guidelines to further the operation of this Code but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.

(2) In formulating general guidelines the board may request that submissions be made to it by any person.

APPENDIX "B"

(3) The board must make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions.

Hearing of complaint

133 (1) If, on application or complaint by any interested person, under section 14, this section or another provision of this Code or regulations, or on its own motion, the board is satisfied that any person has contravened this Code, a collective agreement or the regulations, it may, in its discretion, do one or more of the following:

- (a) order a person to do any thing for the purpose of complying with this Code, a collective agreement or the regulations, or to refrain from doing any act, thing or omission in contravention of this Code, a collective agreement or the regulations;
- (b) order a person to rectify a contravention of this Code or the regulations;
- (c) refuse to make an order, despite a contravention of this Code, a collective agreement or the regulations, if the board believes it is just and equitable to do so in view of the improper conduct of the person making the application or complaint;
- (d) except in relation to conduct regulated by Part 5, make an order setting the monetary value of an injury or loss suffered by a person as a result of a contravention of this Code, a collective agreement or the regulations, and directing a person to pay to the person suffering the injury or loss the amount of that monetary value;
- (e) order an employer to reinstate an employee discharged in contravention of this Code, a collective agreement or the regulations;
- (f) make another order or proceed in another manner under this Code, consistent with section 2, that the board considers appropriate.

APPENDIX "B"

- (2) If a request is made to the board to exercise its discretion under section 65 or another provision conferring on the board a discretion to prohibit, restrict, confine, regulate, control, direct or require the performance of any act or thing, the board may exercise its discretion and make an order, impose conditions or proceed in a manner it considers to be in furtherance of the purposes set out in section 2.
- (3) If at any time before or during a proceeding the board or a person appointed by it is able to settle all or part of the differences between the parties to the proceeding on terms not contrary to this Code, a collective agreement or the regulations, the board may issue a consent order setting out the terms of settlement agreed to by the parties, and this consent order has the same force and effect as an order under subsection (1).
- (4) If in the board's opinion an application or complaint is without merit, it may reject the application or complaint at any time.
- (5) If an application or complaint is made under this section or the Minister makes a direction under Part 6 the board may, in its discretion, after giving each party to the matter an opportunity to be heard, make an interim order or designation pending a final resolution of the application or complaint under this section or a designation under Part 6.
- (6) If the board is satisfied in any proceedings under this Code that a mistake has been made in naming or not naming a person as a party to the proceeding the board may direct that the name of the person be substituted, added or deleted as a party to the proceeding.

Conditions and undertakings

134 (1) If the board makes or may make a designation, decision or order under this Code, it may require, at any time before or after or both before and after the making of the designation, decision or order, that

- (a) certain conditions specified by the board be observed or performed, or
- (b) the applicant or complainant undertake to act or refrain from acting in a manner specified by the board.

APPENDIX "B"

(2) A breach of an undertaking or a refusal or neglect to observe or perform a condition specified by the board under subsection (1) is a contravention of this Code.

Filing order in Supreme Court

135 (1) The board must on request by any party or may on its own motion file in a Supreme Court registry at any time a copy of a decision or order made by the board under this Code or a collective agreement.

(2) The decision or order must be filed as if it were an order of the court, and on being filed it is deemed for all purposes except appeal from it to be an order of the Supreme Court and enforceable as such.

(3) For the purposes of this section, a designation or direction under Part 6 is deemed to be a decision or order of the board.

Jurisdiction of board

136 (1) Except as provided in this Code, the board has and must exercise exclusive jurisdiction to hear and determine an application or complaint under this Code and to make an order permitted to be made.

(2) Without limiting subsection (1), the board has and must exercise exclusive jurisdiction in respect of

(a) a matter in respect of which the board has jurisdiction under this Code, and

(b) an application for the regulation, restraint or prohibition of a person or group of persons from

(i) ceasing or refusing to perform work or to remain in a relationship of employment,

(ii) picketing, striking or locking out, or

(iii) communicating information or opinion in a labour dispute by speech, writing or other means.

Jurisdiction of court

137 (1) Except as provided in this section, a court does not have and must not exercise any jurisdiction in respect of a matter that is,

APPENDIX "B"

or may be, the subject of a complaint under section 133 or a matter referred to in section 136, and, without limitation, a court must not make an order enjoining or prohibiting an act or thing in respect of them.

(2) This Code must not be construed to restrict or limit the jurisdiction of a court, or to deprive a court of jurisdiction to entertain a proceeding and make an order the court may make in the proper exercise of its jurisdiction if a wrongful act or omission in respect of which a proceeding is commenced causes immediate danger of serious injury to an individual or causes actual obstruction or physical damage to property.

(3) Despite this Code or any other Act, a court must not, on an application made without notice to any other person, order an injunction to restrain a person from striking, locking out or picketing, or from doing an act or thing in respect of a strike, lockout, dispute or difference arising from or relating to a collective agreement.

(4) A court of competent jurisdiction may award damages for injury or losses suffered as a consequence of conduct contravening Part 5 if the board has first determined that there has been a contravention of Part 5.

Finality of decisions and orders

138 A decision or order of the board under this Code or a collective agreement on a matter in respect of which the board has jurisdiction is final and conclusive and is not open to question or review in a court on any grounds.

Jurisdiction of board to decide certain questions

139 The board has exclusive jurisdiction to decide a question arising under this Code and on application by any person or on its own motion may decide for all purposes of this Code any question, including, without limitation, any question as to whether

- (a) a person is an employer or employee,
- (b) an organization or association is an employers' organization or a trade union,

APPENDIX "B"

- (c) a collective agreement has been entered into,
- (d) a person is or what persons are bound by a collective agreement,
- (e) a person is or what persons are parties to a collective agreement,
- (f) a collective agreement has been entered into on behalf of a person,
- (g) a collective agreement is in full force and effect,
- (h) a person is bargaining collectively or has bargained collectively in good faith,
- (i) an employee or a group of employees is a unit appropriate for collective bargaining,
- (j) an employee belongs to a craft or group exercising technical or professional skills,
- (k) a person is a member in good standing of a trade union,
- (l) a person is included in or excluded from an appropriate bargaining unit,
- (m) an employer is included in or excluded from an accreditation,
- (n) a person is a dependent contractor,
- (o) an organization of trade unions is a council of trade unions,
- (p) a service is essential for the purposes of Part 6,
- (q) a person is described in section 68 (1),
- (r) a trade union, council of trade unions or employers' organization is fulfilling a duty of fair representation,
- (s) a site or place is a site or place of business, operations or employment of an employer,
- (t) a person is an ally,
- (u) a person is a professional,
- (v) a person exercises technical or professional skills, and
- (w) an activity constitutes a strike, lockout or picketing.

General powers of board

APPENDIX "B"

140 The board, in relation to a proceeding or matter before it, has power to

- (a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the board considers necessary to a full investigation and consideration of a matter within its jurisdiction that is before it in the proceeding,

- (b) administer oaths and affirmations,

- (c) examine, in accordance with rules of the board, evidence submitted to it respecting the membership of an employee in a trade union seeking certification,

- (d) examine documents forming or relating to the constitution or articles of association of

- (i) a trade union seeking certification,

- (ii) a trade union forming part of a council of trade unions seeking certification, or

- (iii) an employers' organization seeking accreditation,

- (e) examine records and make inquiries it considers necessary,

- (f) require an employer to post and keep posted in appropriate places a notice the board considers necessary to bring to the attention of employees a matter relating to the proceeding,

- (g) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

- (i) work is or has been done or commenced by employees,

- (ii) an employer carries on business, or

- (iii) anything is taking place or has taken place

- concerning a matter referred to it under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it and interrogate any person in relation to it,

APPENDIX "B"

- (h) if an application for certification has been received
 - (i) order an employer to provide a list of employees in the proposed bargaining unit to the Board within such time as the Board determines,
 - (ii) order that a representation vote be taken, in accordance with Part 3 and the regulations, among employees affected by the proceeding, before or after a hearing the board may conduct in respect of the proceeding,
 - (iii) appoint a returning officer who must be an employee of the board to conduct the taking and counting of the vote, in accordance with the board's direction, and
 - (iv) order that ballots cast in the vote be sealed in ballot boxes and not counted until the parties to the proceeding have been given an opportunity to be heard by the board,
- (i) enter an employer's premises to conduct representation votes during working hours,
- (j) authorize a person to do anything the board may do under paragraphs (b) to (g) or paragraph (i) and report to the board,
- (k) adjourn or postpone the proceeding,
- (l) shorten or lengthen the time for instituting the proceeding or for doing an act, filing a document or presenting evidence in the proceeding,
- (m) amend or permit amendment of a document filed in the proceeding, and
- (n) add a party to the proceeding at any stage.

Reconsideration of decisions

141 (1) On application by any party affected by a decision of the board, the board may grant leave to that party to apply for reconsideration of the decision.

APPENDIX "B"

(2) Leave to apply for reconsideration of a decision of the board may be granted if the party applying for leave satisfies the board that

- (a) evidence not available at the time of the original decision has become available, or
- (b) the decision of the board is inconsistent with the principles expressed or implied in this Code or in any other Act dealing with labour relations.

(3) Leave to apply for reconsideration of a decision of the board under this section may be granted only once in respect of that decision.

(4) Subsection (1) does not apply to a decision of the board to grant or deny leave under subsection (2) or to a decision made by the board on reconsideration.

(5) An application under subsection (1) must be made within 15 days of the publication of the reasons for the decision that is the subject of the application.

(6) If an application for leave is made under subsection (1), another party affected by the decision may apply for leave under that subsection within

- (a) the period referred to in subsection (5), or
- (b) 5 days of receiving the application,

whichever is longer.

(7) On reconsideration under this section the board may vary or cancel the decision that is the subject of reconsideration or may remit the matter to the original panel.

(8) An application under this section must be made in accordance with the regulations.

Variation and continuation of certification or accreditation

142 The board, on application by any party or on its own motion, may vary or cancel the certification of a trade union or the accreditation of an employers' organization.

Declaratory opinion

143 The board, on application by an employer or trade union, or on its own motion, may give a declaratory opinion on a matter arising under this Code if it considers it appropriate to do so.

Part 10 — Miscellaneous

Powers of Minister

144 For the purpose of obtaining information to which the Minister is entitled under this Code, the Minister or a person designated by the Minister has the powers, privileges and protection of a commission under sections 22 (1), 23 (a), (b) and (d) and 32 of the *Public Inquiry Act*.

Power to enter and inspect

145 The Minister or a person designated by the Minister may, for the purposes of this Code, enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

- (a) work is or has been done or commenced by employees,
- (b) an employer carries on business, or
- (c) anything is taking place or has taken place concerning a matter referred to the Minister under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, or interrogate any person in relation to it.

Power to compel persons to answer questions and order disclosure

145.1 (1) For the purposes of carrying out duties under this Code, a special mediator appointed under section 76, an industrial inquiry commission appointed under section 79 or a special officer may make an order requiring a person to do either or both of the following:

- (a) attend, in person or by electronic means, before the special mediator, industrial inquiry commission or special officer, as applicable, to answer questions on oath or affirmation, or in any other manner;

APPENDIX "B"

- (b) produce for the special mediator, industrial inquiry commission or special officer, as applicable, a record or thing in the person's possession or control.
- (2) The special mediator, industrial inquiry commission or special officer may apply to the Supreme Court for an order
 - (a) directing a person to comply with an order made under subsection (1), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Maintenance of order at hearings

- 145.2** (1) At an oral hearing, a special mediator appointed under section 76, an industrial inquiry commission appointed under section 79 or a special officer may make orders or give directions as necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the special mediator, industrial inquiry commission or special officer who made the order or gave the direction may call on the assistance of any peace officer to enforce the order or direction.
- (2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.
- (3) Without limiting subsection (1), the special mediator, industrial inquiry commission or special officer, by order, may
- (a) impose restrictions on a person's continued participation in or attendance at a hearing, and
 - (b) exclude a person from further participation in or attendance at a hearing until the special mediator, industrial inquiry commission or special officer, as applicable, orders otherwise.

Contempt proceeding for uncooperative person

- 145.3** (1) The failure or refusal of a person subject to an order under section 145.1 to do any of the following makes the person, on

APPENDIX "B"

application to the Supreme Court by the special mediator, industrial inquiry commission or special officer referred to in that section, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

- (a) attend before the special mediator, industrial inquiry commission or special officer;
- (b) take an oath or make an affirmation;
- (c) answer questions;
- (d) produce records or things in the person's possession or control.

(2) The failure or refusal of a person subject to an order or direction under section 145.2 to comply with the order or direction makes the person, on application to the Supreme Court by the special mediator, industrial inquiry commission or special officer referred to in that section, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

Immunity protection

145.4 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the special mediator, the industrial inquiry commission, a member of the industrial inquiry commission or the special officer referred to in section 145.1, or a person acting on behalf of or under the direction of any of these, because of anything done or omitted

- (a) in the performance or intended performance of any duty under this Code, or
- (b) in the exercise or intended exercise of any power under this Code.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Information confidential

APPENDIX "B"

146 (1) The Minister may receive and hold in confidence a proposal made by a party for settlement of a dispute or difference.

(2) If information relates to the business or affairs of any person, whether or not a party to a dispute, difference or other reference, the Minister, if he or she believes disclosure of the information would be prejudicial to the person, may direct that the information must not be made public or that it be made public in the manner he or she directs.

(3) Information obtained for the purpose of this Code in the course of his or her duties by a member of the board, an industrial inquiry commission or other tribunal under this Code, a special officer, a mediator or other person appointed under this Code, an employee of any of them or an employee under the administration of the Minister is not open to inspection by a person or a court, and the member, special officer, mediator or other person appointed under this Code or employee must not be required by a court or tribunal to give evidence relative to it.

Payment of members of tribunals

147 A person appointed by the Minister or the chair as a member of an industrial inquiry commission, committee of special advisors, industry advisory council or other tribunal established under this Code, or as a special officer, special mediator or fact finder must be reimbursed for reasonable travelling and out of pocket expenses incurred by the person, and may be paid remuneration the Minister determines for each day's attendance in carrying out his or her duties under this Code.

Execution of documents

148 For the purposes of this Code, an application to the Minister, a notice requiring an employer and a trade union to negotiate or a collective agreement may be signed if it is made, given or entered into

APPENDIX "B"

- (a) by an employer who is an individual, by that employer, or if several individuals are joint employers, by a majority of them,
- (b) if the employers are represented by an employers' organization authorized by the employers, by the president and secretary of the employers' organization or any 2 of its officers or by a person authorized by resolution passed at a meeting of the employers' organization,
- (c) by a corporation, by one of its authorized managers or by one or more of its principal executive officers, and
- (d) by a trade union, by its president and secretary, by any 2 of its officers or by a person authorized by resolution passed at a meeting of the trade union.

Board may require returns

149 (1) The board may direct a trade union or employers' organization that is a party to an application for certification or to an existing collective agreement to file with the board

- (a) a signed statement of its president, secretary or another official stating the names and addresses of its officers, and
- (b) a copy of its constitution and bylaws,

and the trade union or employers' organization must comply with the direction within the time specified by the board.

(2) The board may direct an employer that is a party to an application for certification or to an existing collective agreement to file with the board

- (a) a signed statement of the president, secretary or another official stating the names and addresses of any of the employer's directors and principal administrative officers, and
- (b) a description of the nature of the employer's business and the location of his or her business or operations.

Trusteeship over local unions

APPENDIX "B"

- 150** (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of the subordinate trade union under the constitution or bylaws of the provincial, national or international trade union is suspended, must, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the board a signed statement of its principal officers, setting out the terms under which supervision or control is to be exercised and it must, on the direction of the board, file such additional information concerning such supervision and control as the chair requires.
- (2) If a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, that supervision or control must not continue for more than 12 months from the date of the assumption without the consent of the board.

Financial statements

- 151** (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.
- (2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.
- (3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.
- (4) The board may order a trade union or employers' organization to furnish a copy of a statement filed under subsection (3) to the members of the trade union or employers' organization that the board in its discretion directs, and the trade union or employers' organization must comply with the order.

Mailed notice presumed received

152 (1) For the purpose of this Code or a proceeding under it, a notice or other communication sent by mail is presumed to have been received by the addressee in the ordinary course of mail unless the contrary is proved.

(2) Every party to a dispute must give written notice to the Minister, the board and the other parties of the address of its principal or other office in British Columbia to which it wishes notices to be sent.

Service of documents

153 A notice, order or other paper or document required to be served for the purpose of this Code may be served by delivering it to or at the residence of the person on whom it is to be served or, if that person is an employer or a trade union, by delivering it or a true copy of it to the employer's agent or to the trade union's place of business during normal business hours.

Legal entity

154 Every trade union and every employers' organization is a legal entity for the purposes of this Code.

Evidentiary effect of documents

155 A document purporting to contain or to be a copy of a regulation, rule, direction, designation, order or other matter of the Minister or the board, and purporting to be signed by the Minister or a member of the board, must be accepted by a court as proof of the regulation, rule, direction, order or other matter of which it purports to contain or be a copy without proof of the signature of the Minister or member of the board or of his or her appointment.

Technicalities not to invalidate proceedings

156 A proceeding under this Code or a collective agreement must not be considered invalid because of a defect in form, a technical irregularity or an error of procedure that does not result in a denial of

APPENDIX "B"

natural justice, and the board, arbitration board, industrial inquiry commission, special officer, court or other tribunal may relieve against those defects, irregularities or errors of procedure on just and reasonable terms.

Reports

157 (1) The board may report to the Minister and must report to him or her on his or her request, and the Minister may authorize the board to publish its report.

(2) The board must, on or before March 1 each year, make a report to the Minister for the preceding calendar year, setting out briefly

(a) all applications to the board under this Code and summaries of the board's findings on them,

(b) other matters the board considers to be of public interest in the discharge of its duties under this Code, and

(c) other information the Minister directs.

(3) The report referred to in subsection (2) must be laid before the Legislative Assembly as soon as is practicable.

Penalty

158 A person who refuses or neglects to observe or carry out an order made under this Code is liable on conviction,

(a) if an individual, to a fine not exceeding \$5, 000, or

(b) if a corporation, trade union or employers' organization, to a fine not exceeding \$50, 000.

Offence

158.1 (1) A person who knowingly provides information that is false or misleading with respect to a material fact contained in a signed statement under section 149 or 150 commits an offence.

(2) A person who produces or relies upon a signed statement given by another person under section 149 or 150 while knowing the signed statement to be false or misleading with respect to a material fact contained in the signed statement commits an offence.

APPENDIX "B"

Lieutenant Governor in Council's power to make regulations

159 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) respecting applications for certification under Part 3;
- (b) respecting voting under this Code;
- (b.1) respecting presentations by employers and trade unions related to votes under this Code;
- (c) respecting application for reconsideration under section 141;
- (d) prescribing requirements for evidence of membership in good standing in a trade union;
- (e) establishing and authorizing fees to be payable for any services provided by the board or its staff under this Code.

(3) A regulation made by the Lieutenant Governor in Council with respect to voting under this Code may, without limitation,

- (a) require employers to supply information and records and to allow the use of facilities owned by the employer, and
- (b) prescribe, with respect to ballots used in votes on the question of whether to strike or on the question of whether to lock out, the form in which the question on the ballots is to be worded.

Minister's power to make regulations

159.1 The Minister may make regulations

- (a) prescribing time periods for the purposes of section 128 (1) (a), including prescribing different time periods for different classes of complaints or applications, which classes may be based on any of the following:
 - (i) the section of the Code under which a complaint or application is made;
 - (ii) the date that a complaint or application is received by the board;

APPENDIX "B"

- (iii) any other basis the Minister considers reasonable, and
- (b) establishing, for the purposes of section 128 (2) (a), the circumstances in which the chair may extend a time period.

Part 11 — Transitional Provision**Transitional**

160 Despite the repeal of the *Industrial Relations Act*, all regulations, certifications, accreditations, orders or directions of the Lieutenant Governor in Council, the minister, the Industrial Relations Council or another official made under the *Industrial Relations Act* remain in full force and effect until repealed, revoked, amended or varied under this Code.

**BRITISH
COLUMBIA**

INFORMATION BULLETIN

For Immediate Release
2018LBR0002-000147
Feb. 6, 2018

Ministry of Labour

Province names Labour Relations Code review panel members

VICTORIA — A committee of special advisers is being appointed to review the Labour Relations Code to ensure British Columbia's unionized workplaces support fair laws for workers and businesses, and are consistent with the labour rights and protections enjoyed by other Canadians.

Labour Minister Harry Bains appointed the three members of the code review panel, which consists of a chair, a representative of employers and a representative of unions. The appointment of the review panel supports commitments in the 2017 Confidence and Supply Agreement (CASA) with the B.C. Green caucus. The panel is recognized as one more step toward improving fairness for workers.

The panel is tasked with consulting interested stakeholders from all regions of the province, and reporting back to the minister by August 2018, with recommendations on any amendments to the code that will better support a growing, sustainable economy. The panel will also review any recent changes in labour laws in other Canadian jurisdictions to ensure B.C.'s labour code is consistent with best practices elsewhere.

The panel will be chaired by Michael Fleming, a mediator/arbitrator and former associate chair of the BC Labour Relations Board. Two labour and employment lawyers will round out the panel, with Sandra Banister representing union interests, and Barry Dong sitting on behalf of employer interests.

The Labour Relations Code establishes the relationships between labour and management — how workers join unions, how employers and unions interact, and how collective bargaining disputes are resolved. The last comprehensive reviews of B.C.'s labour code took place in 1992 and 2003, and the last substantive amendments were made in 2001 and 2002.

Contact:

Media Relations
Government Communications and Public
Engagement
Ministry of Labour
250 888-8074

Connect with the Province of B.C. at: news.gov.bc.ca/connect



BACKGROUND

For Immediate Release
2018LBR0002-000147
Feb. 6, 2018

Ministry of Labour

Labour Relations Code review panel

Labour Relations Code review panel – member biographies

Chair: Michael Fleming

Fleming was called to the bar in 1989. He has over 20 years of experience as an impartial third party, adjudicating and resolving disputes in a wide range of sectors in B.C. and the Yukon, including the public service, Crown corporations, education, transportation, construction, television and film, forestry, pulp and paper, and manufacturing. He has extensive experience in designing and implementing dispute resolution processes involving multiple parties. Fleming has held a number of positions with the Labour Relations Board, including vice-chair from 1997 to 2002 and associate chair of both adjudication and mediation between 2002 and 2012.

Panel member and representative of union interests: Sandra Banister, QC

Banister has practised labour law and civil litigation for over 35 years. She has represented clients from both the public and private sectors and has appeared at all levels of court in British Columbia, labour arbitrations, the British Columbia Labour Board and the Human Rights Tribunal. In 2011, her ability and achievements in the legal profession were acknowledged when she was designated Queen's counsel, and she is recognized in the Best Lawyers peer review. Banister regularly volunteers with organizations providing ongoing legal education. She is a speaker at many seminars and conferences and designed the British Columbia labour law course at the Canadian Labour Congress winter school, where she has taught it since 1985.

Panel member and representative of employer interests: Barry Dong

Dong practises exclusively in the areas of labour, employment, human rights and administrative law, representing clients before federal and provincial labour and administrative tribunals, arbitration boards and panels, in court and in collective bargaining and negotiations. Dong also represents clients in a number of sectors, including the transportation, technology, construction, film and TV, and service industries. In addition to his advocacy practice, Dong's representation of clients includes providing practical labour and employment business advice, and presenting seminars and training workshops.

Contact:

Media Relations
Government Communications and Public
Engagement
Ministry of Labour
250 888-8074

Connect with the Province of B.C. at: news.gov.bc.ca/connect