Ministry of Labour

Labour Relations Code Review 2024

Written Submissions

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<u>Submissions from Individuals</u>

Submission by the

Administrative and Professional Staff Association of Simon Fraser University

to the

Labour Relations Code Review Panel

regarding

BC Labour Relations Code Review

Date: March 21, 2024

Labour Relations Code Review Panel

Ministry of Labour

Panel Members:

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RE: B.C. Labour Relations Code Review

ABOUT APSA

This submission is made by the Association of Administrative and Professional Staff [APSA] at SFU. APSA is the largest employee association at the University, with some 1700 members. It has been in existence for over 40 years, is recognized by the University as the sole bargaining agent for its members, is incorporated under the Societies Act of B.C., has a constitution, an elected Board, a professional staff, policies and a basic agreement that must be negotiated between the parties (effectively amounting to a collective agreement) and processes grievances via mediation and arbitration. The APSA bargaining unit includes administrators, professionals, supervisors, managers at quite senior levels and research staff. There is a similar employee group at UBC named the Association of Administrative and Professional Staff [AAPS] which has over 6,700 members. AAPS has also made a submission to the Panel.

ISSUES

This submission will raise the following four issues:

1. The current Labour Relations Code of BC [LRC and Code] requires reform to be compatible with work, workers, technology, organizational models and the BC economy in the 21st century.
2. The statutory definitions of "employee," "trade union" and "unit" under Section 1 of the Code and the criteria used by the Labour Relations Board [LRB] to define who is a 'manager' must be revised to expand access to meaningful collective bargaining for more workers, including those who may exercise some management functions and are represented by associations such as APSA. In particular, the managerial exclusion under Section 1 of the Code predates the decisions of the Supreme Court of Canada ["SCC" or the "Court"] in Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia 2007 SCC 27 ["Health Services"], Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC ["MPAO"] and Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4 ["SFL"], which recognized the right to bargain collectively and the right to strike as constitutional rights under Section 2(d) of the Charter. In light of these decisions, the blanket managerial exclusion under Section 1 of the Code is unlikely to withstand Charter scrutiny and must be revisited.
3. The Code should be amended to extend protection to alternative forms of collective bargaining, such as employee associations, for which APSA is an example. Not all employees in BC in the 21st century are prepared or able to formally organize into a Board-certified bargaining unit. In addition, occupational associations such as APSA play a crucial role in advancing workplace goals for employees who do not meet the statutory definition of an "employee" under Section 1. Extending some of the Code's key protections to employee associations such as APSA would reduce industrial instability, enhance the ability of workers to effectively negotiate their terms and conditions of employment, and reduce the reliance on the Courts and other legal channels for resolving workplace disputes.
4. If the Code and the LRB are to minimize the proliferation of bargaining units at individual employers, then the Code needs to explicitly recognize that some units will be more than partly supervisory and may include workers who fulfil some management functions. Especially in the realm of "white collar" or administrative/knowledge workers, both workers and the managers they report to can be in the same unit.

1. BACKGROUND AND WHY THE LRC REQUIRES REFORM

Employees have been organizing together to try to balance the overwhelming power of employers for centuries. In their earliest iterations, those organizing efforts resulted in the formation of trade guilds and other associations. Later, employees formed unions in the traditional trades, following in the footsteps of the trade guilds. Ultimately, industrial unions emerged a little over a century ago wherein the "community of interest" shared by the members of the union was not the trade they laboured in but rather the employer they shared. In the early years of the unions, they were often subject to legal attack for being 'in restraint of trade' or for 'conspiracy.' As a result, there was considerable industrial instability and frequent recourse to the courts.

The Labour Relations Code of BC [the "LRC" or the "Code"] is a creature of the 1970s, the child of previous labour laws and, other than minor tinkering in recent decades, still reflects the Industrial Age. It has its genesis in the model of the Wagner Act in the United States and Canadian Privy Council Order 1003, which was invoked during World War 2. Privy Council Order 1003 made unions legal creatures of statute and created a system for resolving industrial disputes during a period when war production was a primary national objective. Labour relations statutes across Canada have had very similar purposes, which can be very roughly summarized as:

1. Industrial stability; and
2. Recognition of unions; and
3. Taking the resolution of industrial disputes out of the courts.

The LRC of 2024 needs to properly reflect the knowledge era, the time of the internet, the advent of AI or the gig economy. Organizations, work and employees today are not representative of the 1940s, 50s, 60s or 70s.

Significantly, Canadian industrial relations in the last 50 years have been dramatically transformed by the Charter jurisprudence of the SCC in the Health Services, MPAO and SFL cases. In its wisdom, the Court did not recognize a constitutional right to a "Wagner model" of collective bargaining for everyone. **Rather, the Court recognized that other models of collective bargaining may also be suitable in some situations in the 21st century to allow individuals to exercise their constitutional right to freedom of association under Section 2(d) of the Charter.**

Moreover, Canada does not have the industrial base that it had 50 years ago. Many sectors of the economy have gone through radical transformation, and new forms of work have emerged. Today, much more work is of the "knowledge" variety than of the traditional industrial form. In addition, much "traditional work" has been replaced by "gig work," which completely severs the traditional employer/employee model. We have seen situations where gig workers have been taken advantage of and where they have tried to group together to bring the power of the collective to bear on their relationship with the organization that employs them.

The purpose of this submission is to highlight some of the ways in which employees choose to organize themselves today that do not always fit the industrial models of the past and the statutory collective bargaining model set out in the Code. The traditional LRB-certified union is not always the first choice of workers today. Yet, workers still seek to organize collectively to try to balance, to some extent, the employer's power. It is past time that the LRC recognizes worker organizations that do not fit the outdated, traditional definition of a "trade union."

In our submission, the current labour relations regime under the Code is not effective for all workers in professional employment contexts like the modern post-secondary institution or employers with significant numbers of administrative or professional staff. In particular, the current regime poses significant obstacles to workers represented by APSA in advancing their workplace goals and hinders the ability of APSA to meaningfully pursue these employees' collective interests. For example, because some APSA members do not meet the definition of "employee" and APSA is not recognized as a "trade union" under the Code, these workers do not have access to the statutory protections afforded to other employees seeking to negotiate the terms and conditions of their employment with an employer with significantly more bargaining power. This means they do not have protection from retaliation and other unfair labour practices, a lack of protection that inhibits, for example, the ability of workers to freely participate in arbitration proceedings without fear of retaliation.

In addition, while APSA and SFU have negotiated a basic agreement and policies, as noted above, APSA cannot enforce the terms of the contract before an arbitrator appointed under the Code, nor does it have any recourse under the Code should the employer fail to engage in good faith bargaining in relation to the agreement. Although the parties have recourse to arbitrators under the Arbitration Act, SBC 2020, c 2, that statute was created to assist commercial parties in resolving contractual disputes and is premised on those parties having equal bargaining power. This does not apply to the bargaining relationship between APSA and SFU, which is marked by the disparity in bargaining power that characterizes all employment relationships.

Crucially, APSA members also cannot meaningfully exercise the constitutional right to strike, as they lack access to any of the statutory protections under the Code. Finally, APSA members who are unsatisfied with their representation cannot go to the Board and have their complaints heard by decision-makers intimately familiar with the duty of fair representation. Instead, they must go to the Courts to have their concerns addressed, raising issues such as access to justice, and bogging down an already overloaded civil litigation system. An example of this is the case Ferrari v AAPS Ferrari v. University of British Columbia, 2012 BCSC 1173, 2014 BCCA 18, where a complaint legal action by a member against UBC and AAPS was heard by took up multiple days of the time of the BC Supreme Court and later the BC Court of Appeal, taking up significant Court time and resources. These are just some of the ways in which the current labour relations regime, as set out in the Code, limits the ability of APSA members to meaningfully pursue their workplace goals and advance their collective interests.

2. THE DEFINITIONS OF EMPLOYEE AND MANAGER MUST BE REVISITED IN LIGHT OF RECENT CHARTER CASE LAW

The Supreme Court of Canada, in the case of Health Services, affirmed that all Canadians have a constitutional right to bargain collectively. In MPAO, the Court further recognized that Section 2(d) of the Charter protects the rights of all individuals to a meaningful process of collective bargaining, striking down the exclusion of RCMP members from the definition of "employee" in the federal public sector collective bargaining regime and the labour relations program imposed on them. While the SCC held that collective bargaining is protected by Section 2(d) of the Charter, that decision did not guarantee a specific model of collective bargaining and explicitly contemplated that other models than the Wagner Model may provide the meaningful access to collective bargaining required under the Charter. Importantly, the SCC in MPAO also affirmed that the right to meaningful collective bargaining "will not be satisfied by a legislative scheme that strips employees of adequate protections in their interactions with management so as to substantially interfere with their ability to meaningfully engage in collective negotiations" (para. 80). By this analysis, the "blanket prohibition" of entire groups of individuals from the protections afforded by a statutory collective bargaining regime can be said to be presumptively inconsistent with Section 2(d) (para. 129).

Furthermore, in SFL, the Court affirmed that the right to strike is an essential part of meaningful collective bargaining and, as such, is also protected under Section 2(d) of the Charter. **The exclusion of a group of workers from the statutory protections for engaging in strike action should, therefore, be seen as presumptively unconstitutional.**

However, in the years since Health Services, MPAO, and SFL, the language of Section 1 of the Code has not been revised to be consistent with the robust constitutional rights affirmed in these decisions.

To be consistent with Section 2(d) of the Charter, the Code must not deprive large swathes of workers from access to the statutory collective bargaining regime. In our submission, this means that the current legislation, which explicitly deprives workers who do not fit the definition of "employee" under Section 1 from access to the entire statutory collective bargaining regime, including the enforcement and protection mechanisms within it, may no longer be compliant with the Charter. **We submit that it is appropriate to revisit the managerial exclusion in the definition of "employee" under Section 1 of the Code so that it minimally impairs workers' Section 2(d) rights.**

To ensure that the Code gives effect to the principles set out in Health Services, MPAO and SFL, and to further the constitutional rights of all employees to access meaningful collective bargaining and the right to strike, the Code should be modified as follows.

RECOMMENDATIONS:

1. **The definition of "employee" in Section 1 and the blanket exclusion of managers, superintendents and those with confidential labour relations capacities must be amended to ensure that it complies with Section 2(d) of the Charter and minimally impairs all workers' constitutional right to meaningful collective bargaining.**
   In our submission, the complete statutory exclusion of all those who "perform the functions of a manager or superintendent" is overly broad and insufficiently tailored to the legislative purpose of avoiding conflict of interest in a collective bargaining relationship. Other jurisdictions, including Manitoba and Saskatchewan, have a narrower statutory exclusion for managers, demonstrating that it is possible to limit the scope of the statutory exclusion in order to minimize its impact on employees who perform some limited management functions but are not true managers in the traditional labour relations sense.

   As such, the Code should be amended to limit the managerial exclusion under Section 1 to members of very senior management, thereby extending the Code's protections to workers without any real, independent managerial authority. Any definition of employee need only exclude the minimal number of employees necessary to represent the organization in collective bargaining.

2. **The definition of "unit" in Section 1 of the Code should be expanded to recognize not only units certified by the LRB but also units of employees who have organized to bargain collectively but are not necessarily certified by the LRB and are represented by another form of an employee association, rather than a "trade union."** A simple set of rules could identify such organizations, similar to those currently used by the LRB in assessing certification applications, such as elected officials, financial stability, a dispute resolution model, etc.

3. **The definitions of "collective agreement" and "trade union" should be revised to include agreements between employers and non-union employee associations such as APSA.**
   As noted above, APSA and SFU are parties to a basic agreement concerning terms of conditions of employment. However, under the current labour relations system, APSA cannot enforce the terms of that agreement before an arbitrator appointed under the Code and may only seek to do so through arbitration under the Arbitration Act.
   Representation by an organization recognized as a "trade union" and the existence of a collective agreement between that union and an employer enables access to a range of statutory protections under the Code, including protections against unfair labour practices (Sections 5 and 6) and bad faith bargaining (Section 11), and protections respecting the right to strike (Part 5)[1]. As explained above, without access to these statutory protections and

1 While it is possible for employers and unions to enter into voluntary recognition agreements, which can then be filed under the Code, this option is not meaningful for organizations who may not meet the statutory definition of "trade union" or where the employees choose another form of collective association.

enforcement mechanisms that are available under the Code, the ability of APSA members to engage in meaningful collective bargaining is seriously hampered.

Moreover, the statutory definition of "collective agreement" under the Code is referenced in other employment-related legislation such as the Workers Compensation Act, RSBC 1996, c 492, and the Employment Standards Act, RSBC 1996, c 113. This ensures that unionized workers are able to pursue the enforcement of their rights under those statutes within the grievance procedure under the Code. This contributes to certainty between the parties as to where disputes engaging these statutes will normally be decided. By contrast, where the parties' agreement does not meet the statutory definition of a collective agreement, this creates uncertainty as to the proper forum for adjudicating disputes engaging these statutes. In these contexts, and out of an abundance of caution, workers may need to turn to various fora to pursue their rights, such as the Employment Standards Tribunal and the Workers' Compensation Board, as well as arbitration under the Arbitration Act, leading to administrative delay and contributing to access to justice issues.

3. OTHER FORMS OF COLLECTIVE BARGAINING NEED TO BE RECOGNIZED

Not all employees in BC in the 21st century are prepared to organize into an LRB-certified bargaining unit represented by a union. In addition, employee associations such as APSA, which are similar to but not the same as unions, can play a crucial role in advancing workplace goals for employees, including those who do not meet the statutory definition of an "employee" under Section 1. We recommend that the Code be revised to extend protections of the Code to workers represented by existing employee associations such as APSA, which may not constitute "trade unions" under the Code.[2]

This would have a number of important benefits, including reducing industrial instability by allowing access to Code provisions respecting arbitration and mediation and protecting against raiding. For example, where a union applies to the LRB to enlarge its bargaining unit in a way that intrudes into an uncertified bargaining unit represented by an employee association, this will inevitably lead to disruption within the employer organization. There is no reason why the Code should not give both types of employee organizations equal footing in such a context. Making the provisions of the Code applicable to employee associations would also expand the scope of workers and worker organizations protected from unfair labour practices by employers, thereby increasing their ability to collectively pursue their workplace goals.

2 This proposal would be consistent with what scholar David J. Doorey has termed the "Graduated Freedom of Association model" of labour relations, which seeks to extend a "thin" version of Section 2(d) rights to all workers, which can be grafted on to the "thicker" Wagner model of labour relations embodied in labour legislation such as the Code. See David J. Doorey, "Graduated Freedom of Association: Worker Voice Beyond the Wagner Model," (2013), *Queens Law Journal*.

Moreover, it would reduce the need for workers represented by such associations to have recourse to the Courts to resolve representation concerns.
The way in which the definition of "trade union" in S1 of the Code is interpreted needs to be enlarged to encompass broader forms of employee groups that may be nascent or near-trade unions per the current interpretation but which fulfill most if not all of the functions of an LRB-certified union.
This change would also further the purposes of the Code as set out in Section 2, including:

Section 2(c) – encourage free collective bargaining
To do this, the Code needs to recognize that not all collective bargaining will be Wagner Model bargaining conducted by LRB-certified unions.

Section 2(e)– promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes
Recognizing that not all employees choose to approach the LRB to certify a union, but some still wish to bargain collectively, the expansion of Code protections to non-trade union organizations would contribute to this objective.

Section 2(f)– minimizes the effects of labour disputes on persons who are not involved in those disputes
In multi-union employers where there are also un-certified employee bargaining units, it is critical that the Code ascribe to the un-certified bargaining units the same protection for the integrity of the unit and protection from raiding that exists for certified units. To do otherwise will actually increase the effects of labour disputes on those who are not involved in those disputes.

Section 2(h) – encourages the use of mediation as a dispute resolution mechanism
Mediation is an invaluable mechanism for resolving employee/employer disputes. Promoting access to mediation under the Code would further this objective. The use of mediation is already established in non-certified collective bargaining contexts such as that between APSA and SFU.

RECOMMENDATIONS:

1. Expand key protections of the Code to non-trade union employee associations and the workers they represent. For the purposes of encouraging collective bargaining and avoiding organizational instability, the Code and the LRB should consider making the Code applicable to workers who are members of union-like employee associations such as APSA.

Those other employee groups need to be recognized and protected in proceedings before the LRB and arbitrations involving unions. Failing to do so will lead to organizational [aka "industrial"] unrest and instability. For example, where a union applies to the LRB to enlarge its bargaining unit in a way that intrudes into the bargaining unit of an un-certified bargaining unit, it will inevitably cause disruption within the organization. There is no reason that the Code and the LRB should not give both types of employee organizations equal footing. As an absolute minimum, the Code should be amended to extend, to the greatest extent possible, the following protections to non-trade union employee associations and the workers they represent:

1. Just cause protection for employees (Section 84); and
2. Protection against unfair labour practices (Sections 5 and 6); and
3. Duty to bargain in good faith (Sections 11 and 47); and
4. Duty of fair representation (Section 12); and
5. Provisions respecting raiding (Section 19); and
6. Strikes and lockouts (Part 5); and
7. Mediation and dispute resolution (Part 7).

This approach would keep the current statutory regime intact while also expanding access to meaningful collective bargaining for workers across BC's economy and ensuring that more workers are able to advance their workplace goals.

4. PARTLY SUPERVISORY UNITS

In traditional labour relations practice, there has been a need to maintain the "adversarial model" of collective bargaining, which is inherent in the Wagner Model. As noted, the Supreme Court of Canada has stipulated that other forms of collective bargaining beyond just the Wagner Model may allow workers to exercise their constitutional right to freedom of association under the Charter. The current regime under the Code does allow, in a small way, for "partly supervisory" units. That needs to be expanded.

The LRB has long held, and for good reasons, a policy against the proliferation of bargaining units. While larger employers such as universities or employers with significant populations of administrative or professional staff can easily accommodate a reasonable number of bargaining units, the existence of multiple bargaining units can be devastating for small employers. To balance the right to collective bargaining with the imperative to avoid a proliferation of bargaining units, the Code and the LRB's practice need to recognize that it is possible for a unit to include both employees and the managers who are responsible for them. This can be accomplished by ensuring that managers, in rightfully exercising their normal duties such as performance appraisal, discipline, etc., are protected from repercussions or internal discipline from the association or union that represents them.

The APSA unit at SFU has a decades-long history of accommodating the inclusion of supervisors and managers (up to quite senior levels) in the same bargaining unit as the employees for whom they are responsible. In a model of labour relations other than the Wagner Model, it works. It is the adversarial design of the Wagner Model that causes problems for some unions including managers.

The inclusion of supervisors and managers in an employee association or union automatically acts to reduce the proliferation of bargaining units. To do otherwise and still comply with the constitutional rights of all citizens would only result in layers of managerial units on top of other managerial units.

SUMMARY

In summation, we say:

1. The Labour Relations Code of BC [LRC and Code] is no longer compatible with work, workers, technology, organizational models and the BC economy in the 21st century.
2. The definition of "employee" in S1 of the Code and the criteria used by the Labour Relations Board [LRB] to define who is a 'manager' predates the decisions of the SCC in the Health Services, MPAO and SFL cases, which made the right to bargain collectively and the right to strike constitutional rights. The Code is, therefore, likely not in compliance with the Constitution and Charter of Rights.
3. Other forms of collective bargaining units need to be recognized. The way in which the definition of "trade union" in S1 of the Code is interpreted needs to be enlarged to encompass broader forms of employee groups that may be nascent or near-trade unions per the current interpretation but which fulfill most, if not all, of the collective bargaining functions of an LRB-certified union.
    a. The definition of "unit" in S1 of the Code needs to recognize that there are now and will be employees who choose other forms of collective bargaining relationships that are not identical to LRB-certified unions. For the purposes of encouraging collective bargaining and ensuring organizational stability, the Code and the LRB must accord such bargaining units similar standing to LRB-certified units.
    b. Those other employee groups need to be recognized and protected in proceedings before the LRB and in arbitrations involving unions.
4. If the Code and the LRB are to minimize the proliferation of bargaining units at individual employers, then the Code needs to explicitly recognize that some units will be more than partly supervisory. Especially in the realm of "white collar" or administrative/knowledge workers, both workers and the managers they report to can be in the same unit.

We encourage the panel to consider a similar submission from the Association of Administrative and Professional Staff at UBC. It is time to amend the Labour Relations Code for the 21st century by taking into account:

- The decisions of the Supreme Court of Canada extending collective bargaining rights and the right to strike to all Canadians; and
- Past changes in work itself with a move to higher levels of employment in the knowledge area rather than predominantly in traditional industrial and trades-oriented sectors; and
- The economic, organizational and technological changes of the past few decades; and
- Less adversarial models of collective bargaining, which may include managers and the workers they supervise in the same bargaining unit.

Respectfully submitted:

Andrew Boden
Executive Director,
Administrative and Professional Staff Association

ASSOCIATION OF ADMINISTRATIVE + PROFESSIONAL STAFF AT UBC

Submission by the

Association of Administrative and Professional Staff of The University of British Columbia

to the

Labour Relations Code Review Panel

regarding

BC Labour Relations Code Review

Date: March 1, 2024

Labour Relations Code Review Panel
Ministry of Labour
Panel Members:
Lindsie Thomson
Michael Fleming
Sandra Banister, KC
Email: LRCReview@gov.bc.ca

RE: B.C. Labour Relations Code Review

Dear Panel Members,

We write in response to the invitation to submit our recommendation to amend the *British Columbia Labour Relations Code* (the "*Code*").

While changes have been made to the *Code* over the past few years, we are concerned that the *Code* still upholds the outdated industrial-era model of the workplace. This adherence to an outdated workplace model has led to a failure in protecting a significant portion of today's workforce who are vulnerable to reprisal, intimidation, exploitation, and job displacement.

The current rules regarding who is eligible to be represented by a bargaining agent, such as a trade union, have changed very little since the industrial era and do not adequately reflect the reality of many of the workers and workplaces of today.

Currently, many large employers, such as universities, hospitals, and major corporations, have multiple layers of employees, far beyond the ranks of "boss," "lead hand," and "labourer" envisioned when the current rules around eligibility for protection by a bargaining agent were initially developed.

Due to the *Code's* adherence to an outdated workplace model, a number of these workers operating within various levels of an organization are not eligible to be represented by a bargaining agent as per the current *Code*. As workplaces continue to grow and evolve, and economies and workforces continue to change, now more than ever, the *Code* needs to be amended to reflect the current realities of the modern workplace.

In 2018, we sent our submission for the Panel's consideration to modernize the *Code* and ensure that these workers are also protected. Unfortunately, our recommendation was not put forward. This year, we respectfully ask again that the Panel:

> **Amend the Code to recognize professional associations which represent employees who do not have broad policy-setting authority.**

By amending the *Code* to recognize professional associations, this will have a number of positive impacts including:

- Improving fairness for workers in the modern economy and workplace
- Increasing good faith bargaining practices and issues resolution
- Promoting certainty and stable labour/management relations

Background

The Association of Administrative and Professional Staff of The University of British Columbia (AAPS) is the bargaining agent and professional association of the nearly 6,500 Management and Professional Staff at UBC. AAPS is one of the largest professional associations in the province and the biggest employee group at UBC.

Due to the nature of their work, our members are found at various levels of the University, from professional roles to supervisory and managerial roles, providing leadership and professional expertise within academic faculties and research initiatives, as well as the University's central service departments.

While some of our members do confront challenges unique to their positions from time to time, it is crucial to recognize that our members encounter the same types of challenges as any other worker protected by the *Code*. This includes unfair treatment, discrimination, intimidation, and a host of other issues, such as potential job displacement due to technological advancements like artificial intelligence. It is therefore imperative that these workers are protected in the same way as workers represented by a trade union.

Unfortunately, the current rules regarding who is eligible to be represented by a bargaining agent, such as a trade union, have changed very little since the industrial era and do not adequately reflect the reality of many of the workers and workplaces of today.

The current rules around who can be covered by a collective bargaining agreement reflect industrial-era realities in which most employers had only one or two "bosses" who had hiring/firing responsibility **AND** authority to set broad policy for the employer. These individuals did not need the protection of collective bargaining agreements.

However, many of the employer's activities on the shop floor were managed by "lead hands" who provided supervision and feedback to the employees, performed training functions, often engaged in the "performance management" techniques of the day and, most importantly, were eligible for protection under a collective bargaining agreement.

Today, many large employers, such as universities, hospitals, and major corporations, have multiple layers of employees, far beyond the ranks of “boss,” “lead hand,” and “labourer” envisioned when the current rules around eligibility for protection by a bargaining agent were initially developed. The University of British Columbia alone has over 18,000 employees.[1] At the time the current eligibility rules were developed, it simply was not envisioned that there would be employers of that size or that employers would require as many layers of employees as is necessary today.

There are many employees today, including a significant portion of AAPS’s membership, who do not have any authority or input on the employer’s practices or policies and essentially serve a function equivalent to the “lead hand” of an industrial or trades-focused workplace. However, in a knowledge-focused workplace, those employees often have some limited responsibility around hiring, discipline, or discharge.

Generally speaking, these employees may provide discipline up to and including suspension on their own, but they would require approval of a more senior manager to terminate an employee. While the final decision to terminate an employee may not rest with this manager, they will often be the one to implement the termination of the employee, including issuing a termination letter and/or meeting with the employee to inform them of their termination.

Under the current rules, professional associations like AAPS, which represent these employees, are not recognized under the *Code*. Despite our members’ efforts in organizing and establishing their own labour relations organization, employers are under no obligation to recognize us as the agent for a group of employees, nor are they obliged to engage in collective bargaining.

Even where an employer chooses to voluntarily recognize the employee group, such as the University of British Columbia has done with AAPS, the employee group does not enjoy many of the rights or protections a trade union does under the *Code*. Amending the *Code* to recognize professional associations, such as AAPS, will have a number of positive impacts including:

- Improving fairness for workers in the modern economy and workplace
- Increasing good faith bargaining practices and issues resolution
- Promoting certainty and stable labour/management relations

Fairness for workers in the modern economy and workplace

It is a fundamental principle of labour-management relations that employees should

[1] *The University of British Columbia.* https://www.ubc.ca/about/facts.html. Web (accessed February 12, 2024).

have the right to democratically determine which organization, if any, should serve as their bargaining agent. Unfortunately, for the approximately 34% of UBC employees who are members of AAPS, recognition of their bargaining agent requires the benevolence of the University. Under the current version of the *Code*, the democratic decision of our members to organize collectively is rendered almost irrelevant.

And UBC is not alone in having a massive proportion of its workforce stripped of its democratic rights of representation. Similar percentages of employees are likely disenfranchised at other equally large and complex employers.

It is a well-settled fact that the best protection and insurance for an employee is collective bargaining and representation by a bargaining agent. Unfortunately, significant numbers of today's employees require the consent of their employer in order to be represented by a bargaining agent.

These employees will generally work at large employers, exacerbating the pre-existing power differential that exists between employer and employee in all workplaces. But most disturbingly, in circumstances where employees feel the need to collectively organize in order to prevent ongoing abuse by an employer, the employees will require their powerful and potentially abusive employer's consent to take steps to form or join a bargaining agent.

Good faith bargaining practices and issues resolution

Labour-management relations, like any contractual relationship, require good faith on the part of both parties to be successful. In addition, labour-management relationships require an effective third-party dispute resolution mechanism for disputes that cannot be resolved by the parties without the assistance of an outside group. While arbitration is the appropriate venue for disputes involving employees and their rights, the Labour Relations Board generally adjudicates disputes that occur at the organizational level.

Professional associations, such as AAPS, do not currently have access to the Labour Relations Board to adjudicate disputes. Therefore, absent collective bargaining language to the contrary, employers are free to interfere in the operations of professional associations without fear of repercussions. Entrenchment under the *Code* and access to the Labour Relations Board would protect professional associations who serve as bargaining agents from interference from unscrupulous employers.

Access to the Labour Relations Board would also protect employees where their bargaining agent has breached their duty of fair representation. Currently, if a member of a professional association that serves as a bargaining agent feels they have not been fairly represented, that member must seek redress through the court system. That

process is slow, expensive, and generally requires that the individual obtain legal counsel in order to navigate the process efficiently.

Access to the Labour Board would allow individuals with concerns about their representation to have those complaints adjudicated in a more timely and cost-effective manner. In addition, the matter would be adjudicated by an individual who is a recognized expert in labour and employment law. If the matter is adjudicated by the courts, there is no guarantee that would be the case.

Promote certainty and harmonious and stable labour/management relations

The creation of a collective bargaining relationship has benefits to both employees and employers. A well-crafted collective bargaining agreement provides stability to an employer by setting out clear and transparent rules governing the workplace. More importantly, a collective bargaining agreement and access to the Labour Relations Board also provides employers with timely and cost-effective adjudication of concerns. This adjudication would occur under the widely tested and understood statutory and regulatory regimes that govern the interactions of all other bargaining agents in the province.

Conclusion

We respectfully submit our recommendation, and we want to thank you for your consideration of our submission.

If we can be of assistance to the Panel in this regard, we would be happy to provide more data, insights, and clarification to inform the Panel's review of the *Code*.

Sincerely,

Lauren (Ilaanaay) Casey
President

Joey Hansen
Executive Director

ABOUT THE ASSOCIATION OF ADMINISTRATIVE AND PROFESSIONAL STAFF OF THE UNIVERSITY OF BRITISH COLUMBIA

The Association of Administrative and Professional Staff of The University of British Columbia (AAPS) is the professional association for the Management and Professional Staff group at UBC.

Management and Professional Staff (M&P Staff) play critical roles in every function of the University. Their leadership and professional expertise are essential to a world-class institution of learning, research, innovation, and community engagement.

AAPS members are highly qualified professionals overseeing information technology, conducting and facilitating research, directing academic and community programs, managing facilities and infrastructure, and guiding and supporting students as academic advisors, counsellors, coaches, program administrators, career and co-op advisors, and travel abroad program coordinators. AAPS members lead industry initiatives and seek partnerships with the broader community for economic development, education, and communication.

AAPS is the legal bargaining agent for the M&P Staff group and represents its nearly 6,500 members in collective bargaining and dispute resolution with the University.

AAPS supports members in resolving workplace issues and strives to improve their work experience at UBC. The Association also creates a connected community of members through networking and professional development opportunities.

AAPS is registered under the *Societies Act*.

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BC BUILDING TRADES
WE BUILD BC™

Submitted to the Labour Relations Code Review Committee Spring 2024

Proposed Changes to the BC Labour Relations Code

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BC BUILDING TRADES

Proposed Changes to the BC Labour Relations Code

Submission to the Labour Relations Code Review Committee

Spring 2024

AUTHORITY

This submission is respectfully submitted on behalf of the 20 local craft construction unions that represent more than 40,000 highly skilled unionized construction workers in B.C.

The BC Building Trades provides coordination and support to affiliated construction unions.

By working together, organized construction workers achieve a powerful voice in government, in bargaining and in their communities.

BC Building Trades
#207-88 Tenth Street
New Westminster, BC
V3M 6H8

On behalf of the BC Building Trades, I welcome this opportunity to provide feedback to the Labour Relations Code Review Committee.

The construction industry is unique. Workers' relationships with their workplaces and with their employers is vastly different in construction than in most typical industrial, commercial and institutional settings. The construction industry requires access to a highly skilled and mobile workforce that can adapt to the unique challenges presented at each project. Workers need to be trained and skilled in the full scope of each construction trade in order to ensure timely, quality and safe production.

It is important that the Labour Code Review Committee understands the unique nature of our industry and how that shapes our call for changes to the labour code in the following areas:

- Virtual picketing;
- Access to employee lists;
- Improving labour relations board processes;
- Amending the common employer provision;
- Enacting provisions that allow the Board to deal with employer-dominated unions;
- Extending successorship protections to all workplaces;
- Reviewing Section 2 of the Code;
- Expanding the Raid Window in construction to include September; and
- Allowing craft unions to raid out their craft from a wall-to-wall bargaining unit

We welcome this opportunity to make the following recommendations to the Committee.

Sincerely,

BRYNN BOURKE
Executive Director
BC Building Trades

About the BC Building Trades

The BC Building Trades is the umbrella organization for 20 local unions that work in British Columbia's building, construction and maintenance sectors. We represent more than 40,000 highly skilled unionized construction workers in B.C.

The BC Building Trades advocates for the training, recruitment and retention of a highly skilled and qualified workforce that can meet BC's labour force demands. We are the leading provider of training in the province with more than 5,000 registered apprentices and nearly 10,000 learners in our system.

The BC Building Trades works with over 400 contractor partners in the institutional, commercial and industrial construction sector to build our communities; ensuring both prosperity and sustainability for future generations.

Recommendation #1

Virtual Picketing

With recent technological advances, many workers are now dispatched from home instead of a local muster point. While the BC Labour Relations Board (the Board) has yet to rule on this, the Code's definition of "picketing" could be read to require the physical presence of picketers.

Recommendation:
The definition of picketing should be amended to make it clear that "virtual" picket lines amount to picketing under the Code as well.

Recommendation #2

Access to Employee Lists

Access to worksite lists is especially difficult in the construction industry where employees may work across many different sites. Employers have a history of manipulating these lists to prevent workers from reaching certification thresholds.

Recommendation:
Where a union is able to demonstrate a threshold of 20% support from employees in the proposed unit, the employee list should be disclosed.

Recommendation #3

Improve Labour Relations Board Processes

Years of underfunding have resulted in the dysfunction of the Labour Relations Board. Affiliates frequently report delays at the Board.

Recommendation:
Proper funding must be established for the Board so it can administer the Code fairly and appropriately. This should include a return to having members of the Board with expertise in

construction to ensure that workers and employers in the industry are being treated appropriately. The Board also undertake systemic improvements to modernize procedures and shorten turnaround time on decisions.

Recommendation #4

Amend the Common Employer Provision

The Code should be amended to remove the discretionary nature of common employer applications. In construction, double breasting inherently undermines a union's bargaining rights. And yet, it can be very difficult or impossible to prove to the Board's satisfaction that bargaining rights have been undermined. This allows construction employers to spin off or buy non-union companies and slowly transfer their unionised business to that non-union entity.

Recommendation:
The Code must be amended to remove the discretionary nature of common employer applications in construction.

Recommendation #5

Enact Provisions for the Board to Deal with Employer-Dominated Unions

There are many organizations in British Columbia that meet the minimal definition of being a trade union but do not act in the interest of working people. Some of these organizations do little more than provide a convenient shield for employers against legitimate trade unions.

Recommendation:
The Labour Relations Board should be empowered to receive complaints, conduct investigations and audit the bona fides of so-called alternative unions.

Recommendation #6

Extend Successorship Protections

The last Labour Relations Code Review committee recommended successorship protections for workers affected by a change to contract service providers in vulnerable sectors including:

a. building cleaning, security or bus transportation

b. health care workers, including food, housekeeping, security, care aides and long term or seniors care.

Workers in all sectors need and deserve successorship protections.

Recommendation:
Extend successorship protections to all workers affected by a change in contract service providers including construction workers.

Recommendation #7

Review Section 2 of the Code

We ask the BC Labour Relations Code Review Panel to review Section 2 of the Code to increase the focus on access to collective bargaining, including the removal of Section 2(b). Duty to ensure the Code "fosters the employment of workers in economically viable businesses." This section of the Code has been used by employers to justify interference with workers' rights (to strike, to organize, to decertify) and deny worker rights.

Recommendation #8

Expand Construction Raid Window to September

The summer raid window in construction has provided certainty as to when the raid window is open and ensures a representative group of construction workers is employed during that period. July and August are busy months in the construction industry and so is September. Many employers hire more workers in September to complete projects before the fall. Increasing the window from two to three months would allow construction workers employed under alternative "union" collective agreements more time to join the labour movement.

Recommendation:
Expand Raid Window in construction to include September.

Recommendation #9

Allowing craft unions to raid out their craft from a wall-to-wall bargaining unit

Craft Unionism is premised on the ability of a group of workers with a strong and unique community of interest (workers who share similar training and skills) to bargaining together with the various employers who employ them. For this system to operate as intended, a Union must be able to represent most or all of the members of its craft.

When most or all of the members of a construction craft are able to work through their craft union, they are able to:

- advocate for safe working practices and regulations;
- provide initial and ongoing training as technologies change;
- provide guidance and mentorship to young workers or people new to the craft;
- ensure that people dispatched to perform work within their craft are properly qualified to work safely; and
- provide pension and health and welfare benefits that carry on past any particular project.

In British Columbia we have a fragmented construction industry. Construction employees work through their craft union, for non-union employers or in wall-to-wall bargaining units.

In some segments of the construction industry, most work is performed by large integrated companies which often have wall-to-wall bargaining relationships. When a construction worker

with an enduring connection to a trade union obtains employment with such an employer, their pension and health and welfare benefits are not maintained. These employees often have no real representation and the Labour Relations Board effectively bars craft unions from raiding their craft from an all employee bargaining unit[1]. This policy ignores the role played by craft unions in providing pension and health and welfare benefits and ignores the role played in training and advocating for safety standards in different sectors of the construction industry.

Allowing building trade unions to raid out their craft from a wall-to-wall bargaining unit would rectify this problem and would allow craft construction workers to enjoy the benefits of effective trade union representation.

Recommendation:
Allows craft unions to raid out their craft from a wall-to-wall bargaining unit.

Conclusion

The construction industry is the economic engine driving growth in our province. Construction contributes more than $22 billion to B.C.'s GDP. But, labour relations practices have not been modernized to address the unique and dynamic challenges of the industry.

The Government of British Columbia has an opportunity through this review to make necessary changes to the Code. We welcome this opportunity to work alongside government in addressing these important issues.

/MoveUP

[1] *Cicuto & Sons Contractors Ltd.*, IRC No. C271/88 (Reconsideration of BCLRB No. 52/87), 1 C.L.R.B.R. (2d) 63 at page 103

BCESC

BC EMPLOYMENT STANDARDS COALITION

BCESC Submission to the Labour Relations Code Review Panel

March 2024

About the BC Employment Standards Coalition

Formed in 2011 the BC Employment Standards Coalition campaigns for decent wages, working conditions, and respect and dignity in the workplace for workers without representation. The coalition is comprised of individual members, representatives from worker and community legal advocacy organizations, public policy researchers, labour lawyers and volunteer advocates.

Submission Summary

In this submission we call for new provisions in the *Labour Relations Code* to enable sectoral certification/broader based collective bargaining (BBB) for workers in the private sector, and that online platform workers be confirmed as specifically included in the definition of "employee" in the Code as they are now included in the Employment Standards Act.

The Imperative of Broader Based Bargaining

According to Statistics Canada's most recent national and provincial data on unionization, among the 10 provinces, workers in British Columbia have experienced over the 41 years from 1981 to 2022 the most dramatic decline in unionization – a decline 14.7% compared to the overall national decline of 9%[1]. According to Statistics Canada this decline in the unionization rate at the national level was driven by the private sector so that by 2021 the unionization rate for private sector workers had fallen to 13.8%, compared to a steady growth to 74.1% for pubic sector workers.[2] There is a lack of comparable private versus public unionization rate trend data for British Columbia but it is reasonable to assume that there has been a similar precipitous decline in unionization for private sector workers in BC.

With approximately 85% of private sector workers in BC without union representation there is an increasing reliance on the *Employment Standards Act* to provide them with basic minimum wages, benefits and other working conditions. However, the employment standards system is also failing to provide justice for unrepresented workers as a growing

[1] Statistics Canada, "Unionization in Canada, 1981 to 2022", November 23, 2022

[2] Statistics Canada, "Trade Union Density Rate, 1997 to 2021", May 30, 2022.

proportion of private sector workers are in precarious forms of racialized employment where they are not even being provided with the basic rights of the ESA due to over 100 complete or partial occupational exclusions from the act, widespread misclassification of employees as independent contractors, being employed by abusive employers who are not being investigated, and by the failure of the Employment Standards Branch to proactively investigate employers with a history of violations or to investigate complaints in a timely manner. It now takes between one and two years for the ESB to assign an officer to investigate a complaint. According to the Ministry of Labour's February 2024 Service Plan in 2023/24 64% of employment standards complaints were taking over 6 months to resolve. These considerable delays contribute to the denial of employment justice for growing numbers of unrepresented workers.

To ensure that BC labour laws keep up with the needs of today's workplaces, particularly in the private sector, your panel needs to address the continuing decline in the level of, and access to, union representation. The enterprize model of union certification and representation, which is at the core of the *Labour Relations Code*, is obviously outdated and presents a formidable barrier to unionization for workers in small work places and in historically non-union sectors of employment.

To address this challenge and the institutionalized inequity in BC labour law it has long been recognized by labour relations authorities that sectoral or regional bargaining structures are necessary to effectively regulate the private sector labour market.[3]

In her 1997 BC sectoral certification case study labour lawyer Diane MacDonald summarized the need for a form of sectoral BBB in the following terms:

> *The way in which members of the Labour Relations Board define an appropriate bargaining unit helps determine who can bargain with whom and who cannot bargain at all. Given the high turnover rates of precariously employed individuals, employer-specific bargaining units do not serve their interests. Moreover, workers in small workplaces do not have the resources or the power to bargain on an enterprise level. Even if a small workplace is certified and negotiates a collective agreement, the bargaining unit will have few resources and little bargaining power, especially when measured against large employers such as McDonalds or Starbucks.*
>
> *By assuming that bargaining should take place within employer-imposed categories, B.C. Labour Relations Board policies undermine bargaining attempts by these workers. The presumption that bargaining is to take place worksite by worksite has been particularly hard on retail, insurance, clerical, restaurant and bank working people, and in other sectors where firms*

[3] See for example John Ogrady, "Beyond the Wagner Act, What Then?" in Daniel Drache, ed., Getting on Track: Social Democratic Strategies for Ontario (Montreal: McGill-Queens University Press, 1992) 157-8; and Charlotte A. B. Yates, "Staying the Decline in Union Membership: Union Organizing in Ontario, 1985-1999", *Relations industrielles/Industrial Relations* 55, no 4 (Fall 2000).

frequently operate as chains or franchises. Women, workers with disabilities, immigrants and workers of colour are the most profoundly affected by these legal constructions which result in race- and gender-divided labour markets.

Without the aid of some form of sectoral certification and bargaining, unions are in a weak position in terms of removing workers' standard of living from competition among employers. Unions generally cannot use economic sanctions to persuade other employers within a sector to adopt the provisions of a specific collective agreement. Nor can they encourage other employers to maintain the same overall labour costs as the employers bound by the collective agreement. Their only recourse is to bargain on an individual basis to induce each employer to agree to the same terms and conditions that were achieved at other individual worksites.[4]

It is now 32 years since the *Labour Relations Code* review by the Sub-Committee of Special Advisers members Baigent, Ready and Groper, and the recognition by the majority members Baigent and Ready that the decline in private sector unionization in BC needed to be addressed in the *Labour Relations Code* through the introduction of BBB provisions (since referred to as the Baigent-Ready Model). This recommended form of BBB they explained would apply to small work places in historically non-unionized sectors. The then NDP government's subsequent rejection of the Baigent-Ready model was widely viewed as a historic failure in public policy in the labour relations community. This failure after 32 years now needs to be addressed.

The Baigent-Ready model of BBB continues to be widely viewed as innovative and powerful, and applicable to the unionization challenge for private sector workers. This was evident when in 2016 the Ontario Changing Workplaces Review Interim Report produced a number of BBB model options, including the Baigent-Ready Model which received the strongest support from the labour movement.

BBB is intended to reduce inequality, primarily through reduction in wage competition; reduce employer resistance to unionization; improve workers' access to collective representation; and increase workers' bargaining power.[5]

In her 1997 case study of sectoral certification based on the Baigent-Ready model and subsequent consideration of it labour lawyer Diane MacDonald identified the problem of it being focused only on sectors (a geographic area encompassing employees who perform similar work tasks for employers engaged in similar enterprises) which were "historically underrepresented by trade unions." Each workplace in the sector could have no more than fifty full-time employees, or the equivalent number

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[4] Diane MacDonald, "Sectoral Certification: A Case Study of British Columbia", *Canadian Labour and Employment Law Journal 5* (1997), 266-267

[5] See Sara Slinn, "Broader-based and Sectoral Bargaining Proposals in Collective Bargaining Law Reform: An Historical Review", circa 2018, p33. Aversion of this paper was subsequently published by Osgood Hall Law School at York University in 2020.

of part-time employees. Concluding that these criteria unnecessarily restrict the application of sectoral certification she proposed that to address the needs of the restructured labour market, the legislation should target both those who are employed in small workplaces (as set out in the Baigent/Ready model), and those who are employed in precarious or contingent forms of employment (e.g., temporary, contract and seasonal workers).[6]

In her historical review of BBB Law Professor Sara Slinn found that rather than being a foreign concept, broader-based and sectoral representation bargaining is a long-standing feature of collective bargaining regulation in Canada. And that BC especially has had extensive experience with voluntary and statutory BBB arrangements for private and public sector collective bargaining, significant statutory and voluntary BBB arrangements for the private sector since the 1970s and intensified in the mid-1990s for the public sector.[7]

The BC Employment Standards Coalition supports the submissions of our members and supporters who are also calling for BBB provisions in the *Labour Relations Code,* such as the BC Federation of Labour, the Worker Solidarity Network, the Vancouver Committee for Domestic Workers and Caregiver Rights, and the Migrant Workers Centre. In particular we support the recommendations of the Migrant Workers Centre for additions to the *Labour Relations Code* to facilitate broader based bargaining for private in-home caregivers, which could be the basis of a pilot for a sector of particularly precarious and vulnerable workers.

Confirm that Gig Workers are "Employees"

After studying the status and needs of app-based online platform workers for over two years the Minister of Labour's *Bill 48 – Labour Statutes Amendment Act, 2023* received royal assent in which for the purposes of the *Employment Standards Act:* "an online platform worker is to be considered an employee, whether or not the online platform worker is an employee under any law, and …". We welcomed this important legal recognition as the first step in countering the worldwide campaign of all the large multi-national online platform employers of gig workers to not only exclude gig workers from there rights under employment law on the basis that they are independent contractors, but to also exclude them on the same basis from the right to be unionized under labour relations law.

And although the *Labour Relations Code* defines an "employee" as a person employed by an employer, and includes a dependent contractor, with the right to have union representation, any ambiguity that that definition has application to app-based online platform workers should be addressed in the *Labour Relations Code* in the same way as it has been in the *Employment Standards Act*, which is to explicitly confirm that online platform workers are "employee's" for the purposes of the *Code.*

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[6] See Diane MacDonald, "Sectoral Certification: A Case Study of British Columbia", *Canadian Labour and Employment Law Journal 5* (1997), 273-274.

[7] Sara Slinn, 34.

Conclusion

In the Minister of Labour's mandate letter of November 26, 2020 one of the items that the Minister was directed to make progress on was to: "Ensure that every worker has the right to join a union and bargain for fair working conditions." And in a mandate letter of the same date the Parliamentary Secretary for the New Economy under the Ministry of Labour one of the items the Parliamentary Secretary was directed to make progress on was to: "Work with labour and business organizations to **develop a precarious work strategy** that reflects modern workplaces' diverse needs and unique situations." (emphasis added).

Then again in his December 2, 2022 mandate letter to the Minister of Labour new Premier David Eby stated that he expected the Minister of Labour to prioritize making progress on a number of topics, including to: "Ensure our labour law is keeping up with modern workplaces through the upcoming review of the Labour Code, providing stable labour relations and supporting the exercise of collective bargaining rights."

The Minister of Labour was also given the assistance of a new Parliamentary Secretary, MLA Janet Routledge, who also received a mandate letter from the Premier. In her mandate letter the Parliamentary Secretary was instructed to work with the Minister of Labour to: "Continue work to develop a precarious work strategy that reflects the diverse needs and unique situations of today's workers and workplaces."; and "Review labour policy innovations in other jurisdictions related to the emerging economy and precarious work to identify trends that may inform the development of labour policy in British Columbia."

We submit that these long-standing priorities and objectives to address the growth of precarious employment will not be achievable without the institution of BBB provisions in the *Labour Relations Code*, along with the explicit recognition that app-based online platform workers are "employees" under the *Code.*

Respectfully,

David Fairey & Pamela Charron
Co-Chairs, BC Employment Standards Coalition

DBF/
March 21, 2024

Submission to the Labour Relations Code Review Panel

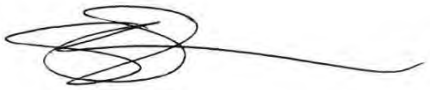
BCFED Response to

Labour Code Review

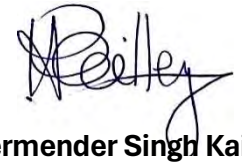
March 2024

Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 affiliated members across the province of British Columbia.



Sussanne Skidmore (she/her)
President



Hermender Singh Kailley (he/him)
Secretary-Treasurer

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The BC Federation of Labour is located on unceded xʷməθkʷəy̓əm (Musqueam), sel̓íl̓wətaʔɬ (Tsleil-Waututh), Skwxwú7mesh (Squamish) territories.

ab/moveup

The BC Federation of Labour is pleased to submit its recommendations for improvements to BC's Labour Relations Code

In the five years since the previous review of the Labour Relations Code, our world and workplaces have changed significantly. In 2018, online platform work was just beginning in BC for food delivery services, and ride-hailing had not yet arrived in the province. The global COVID-19 pandemic necessitated the explosion of remote work. And more recently, artificial intelligence (AI) has significantly advanced and can take on tasks that were unimaginable just five years ago.

With many of the recommendations flowing out of the last Code review now implemented, we can assess whether they've achieved their stated goals. Many have brought welcome improvements to our workplaces and made a difference in workers' lives. We recommend that these improvements, such as successorship protections, be maintained and, in some cases, expanded to benefit more workers.

But workers continue to face considerable gaps in their ability to access unionization, and those who would benefit from collective bargaining the most too often find themselves without a path to representation. These workers are disproportionately women, racialized workers, workers with disabilities, 2SLGBTQIA+ workers, young workers, migrant workers, newcomers to our province and those from other marginalized groups.

It is time to look to new bargaining structures — sectoral and broader-based bargaining models — to ensure that precarious workers have a pathway to unionization. All workers must have access to their Charter-protected right to organize and have meaningful collective bargaining and should be able to exercise that right without fear of retaliation. Our labour relations system must provide workers with timely access to justice and the services and supports that are promised in the Code.

As well, the path to Reconciliation requires the Code to be reviewed and aligned with the UN Declaration on the Rights of Indigenous Peoples. While we understand this work may be beyond the scope of this review, the BC Federation of Labour supports this necessary and important work. We look forward to participating in the future.

As you consider amendments to the Code, we urge you to adopt one overriding lens: to ensure that they create equity, fairness and balance, giving working people a voice at the table in their workplaces. As BC businesses expand and proliferate, new structures emerge. Proposed amendments must put the needs of workers at the centre, protect their rights, and address the concerning growth of precarious work. And they must ensure all workers can exercise their Charter right to collectively organize.

Our submission makes recommendations in four key areas:

- Improving access to collective bargaining;
- Preserving and protecting workers' rights;
- Improving processes at the Labour Relations Board; and
- Acknowledging the requirements of the *Declaration of Indigenous Peoples Act*.

Executive Summary of recommendations:

A. Improving Access to Collective Bargaining:

1. Explore sectoral/broader-based bargaining

Establish a single-issue commission as soon as possible to consult on the implementation of sectoral bargaining to address changing workplaces structures, BC's high level of worker precarity and the barriers to unionization too many workers face. This commission should consult on a specific sectoral bargaining model or models to provide focus and narrow the scope of the feedback it receives.

2. Recognize the success of single-step certification

Maintain single-step certification as an effective and fair method for trade union certification.

3. Improve access to employee lists

Provide employee lists with contact information to organizers during a certification process once a trade union has signed cards from at least 20% of the eligible workers.

B. Preserving and Protecting Workers' Rights:

4. Expand successorship protection

Amend successorship provisions so the certification follows a transfer of workers and work to reflect the modern realities of contracting, subcontracting, contract flipping and modern forms of corporate transfer. Place the primary evidentiary burden on the employer where a successorship or common employer application is filed.

5. Ensure provincially regulated workers can honour the picket lines of workers who are regulated by the federal government or another provincial government.

Amend the definition of strike and person as set out in Bill 9, Miscellaneous Statutes Amendment Act, 2024.

6. Extend the freeze period for first collective agreements

Amend section 45 of the Code to have the statutory freeze apply until a first collective agreement is reached by eliminating the time limit.

7. Address remote work and virtual picket lines

Ensure that remote or digital workers have the right to establish virtual picket lines and communicate about the strike with the public. Confirm that a virtual picket line has the same standing as any other picket line.

8. **Protect the rights of online platform workers**

Affirm that online platform workers are covered by the definition of employee in the Code and have the right to organize.

9. **Allow secondary site picketing**

Amend section 65(4) by adding a new item (b) to permit picketing at worksites where the employer is performing substantially similar work, and by deleting section 65(8).

10. **Prevent double breasting**

Amend the common employer provision to remove the discretionary nature of common employer applications in construction.

11. **Address the impact of AI and automation on BC's workplaces**

Establish a commission dedicated to examining the impact of artificial intelligence and automation on BC's workplaces.

12. **Better protect workers during restructuring**

Strengthen the adjustment plan language in section 54 to better protect workers by requiring negotiated adjustment plans.

C. Improving LRB processes:

13. **Increase LRB funding**

Provide a significant increase of at least $5 million to the operating funding for the Labour Relations Board. Provide the necessary capital funding to accommodate additional staff and meet technology requirements.

14. **Improve timely access to LRB services and decisions**

Ensure that the Board has sufficient personnel and resources to meet the timelines established in the Code and to make procedures, services and decisions available within a reasonable timeframe.

D. Indigenous Rights and Reconciliation

The BC Federation of Labour is committed to Reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration on the Rights of Indigenous Peoples. BC's unions strongly believe that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.

Recommendations:

Improving Access to Collective Bargaining

Recommendation 1: Explore sectoral/broader-based bargaining

Establish a single-issue commission as soon as possible to consult on the implementation of sectoral bargaining to address changing workplaces structures, BC's high level of worker precarity and the barriers to unionization too many workers face. This commission should consult on a specific sectoral bargaining model or models to provide focus and narrow the scope of the feedback it receives.

The prevalent model of enterprise collective bargaining has left many workers behind, unable to exercise their Charter bargaining rights. The enterprise model is effective for midsize to large workplaces where workers convene at a single worksite. But more and more, this doesn't represent the structure of our modern workplaces. Workers in small (and very small) workplaces, franchises, contracted work, or dispersed workplaces have little ability to effectively unionize and use their collective power.

Here are some examples:

BC has thousands of **domestic workers:** individuals employed in a home, usually working alone and employed by a single family, and most of them are racialized, newcomers and often employed through the Temporary Foreign Worker Program (TFWP). Their isolation and vulnerable status make traditional organizing impossible.

Migrant farm workers come to BC to work on farms, ranches, orchards and other agricultural operations. They must navigate multiple enforcement and government bodies while facing language barriers and isolation from the broader community. They rely on their employers for both income and housing and often owe fees to recruitment agencies despite this practice being prohibited. Community groups that advocate for workers are given little standing by employers, and efforts to unionize this workforce have been largely unsuccessful.
BC's tens of thousands of **ride-hail and food delivery workers** — overwhelmingly racialized immigrants or newcomers to Canada — work for large, powerful multi-national corporations, with no central dispatch location and major if not insurmountable structural obstacles to unionizing and bargaining.

Certified dental assistants (CDAs) are predominantly women, working in dental offices for small businesses often owned by one or more dentists. With only a handful of workers in each office, wall-to-wall certification would provide little to no bargaining power, and the difficulties in organizing multiple very small offices are enormous.

Franchises employ generally small groups of workers — tending to be racialized, younger and, increasingly, employed through the TFWP — under structured employment conditions set by central corporate bodies, making the work virtually identical. Yet, each franchise must be unionized one by one, with turnover and the high degree of central corporate influence making organizing and bargaining extremely difficult.

Workers in industries like those described above face both structural challenges when unionizing and significant barriers to achieving a first collective agreement. Failing to address their needs increases experiences of precarity, drives down working conditions and entrenches systemic discrimination, making already-vulnerable workers even more vulnerable and at higher risk of economic insecurity.

Implementing a sectoral and/or broader-based bargaining model ensures workers can have a say in their pay and working conditions. BC's labour movement has significant experience with sectoral bargaining models, which continue to be used in several sectors including health care, education and community services. Other sectors like construction have used a sectoral model in the past. Jurisdictions such as New Zealand and the state of California have implemented sectoral models to improve working conditions in sectors with vulnerable workers.

We see moving ahead on sectoral bargaining as critically important for our province's most vulnerable workers. Migrant workers, for example, would greatly benefit from sectoral bargaining as it would provide representation and day-to-day support by ensuring regularized wages, fair working conditions and a consistent standard of care across the workforce. Union representation would provide a clear path and faster remedies to unsatisfactory conditions. A sectoral model could also help to level the playing field by ensuring workers aren't unfairly targeted for attempting to organize or for speaking out about working conditions that are contrary to their Labour Market Impact Assessment Contract.

A model for sectoral bargaining directed at industries with traditionally low union density was proposed by the majority of the 1992 Labour Code Review panel. The issue was again raised in submissions in 2018, but the panel determined it hadn't received sufficient input to make specific recommendations. Instead, the panel proposed further study through a single-issue commission. Neither recommendation was implemented.

Our affiliated unions have reviewed several models of sectoral and broader bargaining, and we are continuing to discuss the key elements of a model that would address the needs of BC's modern workplaces. Due to the short timeline of this review, we do not have a specific model to recommend, but we hope to expand on our views at our oral presentation in March.

Our recommendation is to establish a panel to move ahead with consulting on and implementing sectoral bargaining in short order. Further, given the experience of the last panel in BC and Ontario's Changing Workplaces Review, we believe an open-ended process is unlikely to result in submissions that move the process meaningfully forward. We suggest instead that the proposed commission consult on a specific model or models of sectoral bargaining to get more focused and usable feedback for implementation.

Recommendation 2: Recognize the successes of single step certification

Maintain single-step certification as an effective and fair method for trade union certification.

In June of 2022, the provincial government reinstated single-step certification. How workers can unionize has been a contentious issue throughout the past few decades of labour relations in BC, but the results since the reinstatement should speak for themselves.

Single-step certification successfully and objectively removes barriers to unionization.

In 2023, the Board approved 195 applications for certification. This number is 36% increase over the 143 applications received in 2022. And in 2022 the number filings post Bill 10 was more than double those from the first half of the year.[1] Workers are organizing at an impressive rate because there are fewer structural barriers and fewer opportunities for employers to interfere and intimidate workers.

Single step also helped workers achieve collective bargaining rights in traditionally harder to unionize sectors like arts, entertainment and recreation; construction; real estate and rentals leasing; and retail. For example, in 2022 successful applications in retail jumped from only three before single-step was implemented to nine[2].

To ensure the integrity of the single step process, the LRB has implemented an extensive membership card audit process. That process has found very few issues with cards. In 2022, 74 certification applications were audited, and concerns were statistically insignificant. In all cases the Board "was able to satisfy itself there was no issue with the veracity of the union's application or the membership evidence submitted in support of it.[3]"

But it's not just about the numbers. It's about the difference joining a union makes in a workers' life. Sean McKenna, a worker who organized his workplace through single-step certification had this to say about single-step certification:

> *"The legislation changed partway through the union drive, and I honestly do believe it was the reason why were successful. After we had certified, we had some employees that might have been intimidated into not voting. Single-step certification allows a union to form more easily, more organically…Honestly, before, I didn't think there was anything that we could do. We were at the mercy of an owner that we had to beg for raises, beg for safety. I feel a lot more positive going to work, seeing everybody there and know that we're taking the steps to help them. This is exactly what unions are for."*[4]

We have asked our affiliates and their members to share more stories with you in their submissions and oral presentations.

Recommendation 3: Improve access to employee lists

Provide employee lists with contact information to organizers during a certification process once a trade union has signed cards from at least 20% of the eligible workers.

Access to accurate employee information allowing effective communication with workers is essential to fair organizing practices. Workers interested in unionizing in workplaces with a high number of remote workers, dispersed worksites, high turnover, shorter term employment contracts and those working through apps face unfair barriers. These new ways in which people are employed are now permanent

[1] https://thetyee.ca/News/2023/12/22/How-2023-Became-Year-Of-Unions/

[2] https://www.lrb.bc.ca/media/20791/download?inline

[3] https://www.lrb.bc.ca/media/20791/download?inline

[4] https://www.youtube.com/watch?v=PW23578Ig4k&t=4s&ab_channel=BritishColumbiaFederationofLabour

features in our economy and the Code must be adapted accordingly to provide workers with meaningful access to union certification and collective bargaining.

Employers have all the control over employees – who they hire, where and when they work, and how they can be communicated with. Even in more traditional workplaces, technological change has made it more difficult for workers to identify and communicate with their colleagues. Workers must be provided with access to their colleagues if they are going to have any meaningful ability to freely associate and have a union in their workplace.

In 2016, Ontario's "Changing Workplaces Review" recognized the implications of new workplaces structures and the impact on workers' ability to communicate with each other about the conditions of their employment. That review recommended that employers be required to provide a list of employees where a union made application and had obtained the support of 20% of the workers in a proposed bargaining unit.

The sharing of this type of information is appropriate as union drives are not external or public processes. They are internal to the workplace and led by employees coming together to form or join a union for the purposes of accessing the rights set out in the Code. Collecting names, employment location and personal contact information is a routine part of an organizing drive.

We recommend that employers be required to provide employee lists, containing work location, job title and personal contact information, once the union has met a 20% threshold of cards signed. This strikes an appropriate balance of facilitating union organizing in the modern workplace while avoiding unwarranted dissemination of personal information.

Preserving and Protecting Workers' Rights

Recommendation 4: Expand successorship protection

Amend successorship provisions so that the certification follows a transfer of workers and work to reflect the modern realities of contracting, subcontracting, contract flipping and modern forms of corporate transfer. Place the primary evidentiary burden on the employer where a successorship or common employer application is filed.

One of the most impactful improvements arising from the 2018 Code review was the expansion of successorship protections to workers employed in building cleaning, security, bus transportation, food services, and non-clinical services in the heath sector. By ensuring the continuation of their collective agreement during a contract flip, thousands of workers were protected from losing their jobs, negotiated wages and benefits.

At a time when we have seen significant cost of living increases, workers cannot afford to lose ground. Providing successorship protections is also an important pay equity measure as it protects racialized, immigrant, and newcomer workers, who are overrepresented in the sectors where contract flips commonly occur.

Successor protections are needed for workers and their unions in every sector. No employer should be able to outsource, re-tender or flip a contract to undermine the democratic rights of workers to

unionization and collective bargaining. Workers must be equally protected in the transfer of work and in the sale of business regardless of the form taken.

The onus should be on employers to show successorship provisions do not apply, since they have access to pertinent information about the successorship or transfer of business. A similar requirement already exists in section 14(7) of the Code related to unfair labour practices.

Recommendation 5: Ensure provincially regulated workers can honour the picket lines of workers who are regulated by the federal government or another provincial government.

Amend the definition of strike and person as set out in Bill 9, Miscellaneous Statutes Amendment Act, 2024.

A 2022 reconsideration decision found that the refusal of poly party union members to cross the Canadian Merchant Services Guild's picket line at the Vancouver Shipyards amounted to an illegal strike.[5] The workers were ordered back to work. The panel found that the current language in the definition of strike, "permitted under this code" was insufficient to protect provincial picketing as the LRB does not have jurisdiction over strikes established under another code e.g. the *Canada Labour Code*.

Since that decision, the issue has arisen during several federal job actions where provincially regulated workers were directed to cross the picket lines. This caused significant confusion, frustration and disappointment amongst union members. The affiliates of the BC Federation of Labour strongly hold the view that protecting the right to honour picket lines regardless of the jurisdiction is a fundamental expression of worker solidarity. Further, allowing workers to honour picket line reduces worker-to-employer and worker-to-worker tension and resentment that can build during difficult and long job actions leading to violence or the destruction of property.

In March, the government tabled legislation as part of Bill 9 to amend the definition of person and strike in the Code as follows:

Section 1 of the Labour Relations Code, R.S.B.C. 1996, c. 244, is amended

> ***(a) in subsection (1) by repealing the definition of* "person" *and substituting the following:***
>
> **"person"** includes an employee, employer, employers' organization, trade union and council of trade unions, but does not include, except for the purposes set out in subsection (3), a person in respect of whom collective bargaining is regulated by the *Canada Labour Code*; **,**
>
> ***(b) in subsection (1) by repealing paragraph (b) of the definition of* "strike" *and substituting the following:***
>
> (b) a cessation, refusal, omission or act of an employee that occurs as a direct result of, and for no other reason than,

[5] https://lrb.my.salesforce.com/sfc/p/#f40000022yYB/a/0A0000000qUu/QEgiy412pn2APH5hAsp06ikfrrPXV82xTMxzOx0oEcE

(i) picketing permitted under this Code, or
(ii) picketing conducted by employees in respect of whom collective bargaining is regulated by the laws of Canada or another province who are locked out or on strike ***, and***

(c) by adding the following subsection:

(3) For the purposes of paragraph (b) (ii) of the definition of "strike" in subsection (1), the definitions in subsection (1) are to be read as though the definition of "person" did not exclude a person in respect of whom collective bargaining is regulated by the *Canada Labour Code*.

We support the intent of this amendment. We understand its intent is to capture all federally regulated picketing including workers covered by the *Federal Public Sector Labour Relations Act* and picketing conducted under other provincial legislation. As of the date of this submission Bill 9 has not received Royal Assent.

Recommendation 6: Extend the freeze period for first collective agreements

Amend section 45 of the Code to have the statutory freeze apply until a first collective agreement is reached by eliminating the time limit.

A successful certification doesn't result in immediate improvements for workers; a first agreement is necessary. Negotiating a first agreement, and doing so within a reasonable timeframe, continues to be very difficult, especially in sectors with traditionally low density. Because the freeze period can end before a first agreement is reached, delays at the table are a tactical advantage for employers. Running out the time clock gives employers a chance to change pay and working conditions to undermine negotiating efforts. It remains very difficult to achieve a first agreement without taking strike action -- resulting in more workplace disruptions.

Flowing from the 2018 panel's recommendations, the government made some improvements to the first agreement processes by providing the option of mediation prior to a strike vote and increasing the freeze period from four to twelve months. Our affiliates welcomed both these changes, but they report they are continuing to experience significant challenges in getting first agreements due to intentionally long delays as employers try to run out the clock.

The freeze period in section 45, which prohibits an employer from changing the terms and conditions of employment after certification for twelve months, continues to be the biggest barrier. A time-limited freeze period incentives employers to drag their heels in negotiations. Removing the time limit would encourage employers to quickly reach a negotiated agreement or trigger section 55 at the end of the one-year period.

Recommendation 7: Address remote work and virtual picket lines

Ensure that remote or digital workers have the right to establish virtual picket lines and communicate about the strike with the public. Confirm that a virtual picket line has the same standing as any other picket line.

Though some workers engaged in remote work prior to the COVID-19 pandemic, the number of workers who work remotely on a full or part-time basis has substantially increased. Remote work has given greater flexibility to both workers and employers. It is no longer uncommon for businesses to employ many if not all their workers on a full-time remote basis. Many collective agreements include negotiated language establishing the terms and conditions of remote work.

The current definition of picketing does not reflect this change in workplace structure. Remote workers must have the ability to establish and communicate about virtual picket lines. Workers have already established the power of virtual pickets in practice by using social media and websites to communicate about their struck work. But without guidance from the Code, we see this as an area of potential friction between workers and their union and employers.

We encourage the panel to review and recommend any necessary amendments to the definition of picketing in section 1(1) and sections 65 and 66 to ensure remote workers can establish, communicate about and honour virtual pickets.

Recommendation 8: Protect the rights of online platform workers

Affirm that online platform workers are covered by the definition of employee in the Code and have the right to organize.

In November of 2023, bill 48, the *Labour Statutes Amendment Act* expressly included online platform workers (those employed in food delivery and ride-hailing) as employees for the purposes of the *Employment Standards Act* and as workers for the purposes of the *Workers' Compensation Act*.

In speaking to the Bill, Labour Minister Harry Bains outlined his intention that these workers have access to their constitutional right to association. He said,

> *"But workers, as I said before — regardless of where they are from, what they do and how they do it — deserve appropriate employment standards and protections like minimum wage, tip protection, wage transparency, health and safety standards and access to workers compensation coverage if injured or become sick on the job.*
>
> *They can exercise their constitutional right to association under the Charter of Rights and Freedoms, so they could join a union and collectively bargain for better benefits and wages. Those are standards that workers should be entitled to. Those are the minimum standards that any company should provide to workers, who are the key to their success.*[6]

[6] https://www.leg.bc.ca/documents-data/debate-transcripts/42nd-parliament/4th-session/20231121pm-Hansard-n365#bill48-2R

It is our view that inclusion in the ESA and WCA are sufficient to provide coverage under the Labour Relation Code, but the large multi-national companies who employ these workers have a long history of engaging in extensive litigation to limit workers' rights. We do not believe these workers should have to litigate to determine if they have the right to bargain collectively, especially given their precarity and the other obstacles they face in organizing a large and distributed workplace.

Additionally, these workers must have a path to collective bargaining because they will receive only limited rights under the *Employment Standards Act*. It would be unfair to offer them inferior rights and simultaneously deny them an avenue to collectively bargain better working conditions. Providing limited rights to a predominately racialized and immigrant workforce is in and of itself deeply problematic. Refusing these workers collective bargaining as an avenue of relief amounts to systemic oppression.

We recommend that the panel review the definition of employee and propose amendments if needed to provide online platform workers clear access to the right to organize and collectively bargain.

Recommendation 9: Allow secondary site picketing

Amend section 65(4) by adding a new item (b) to permit picketing at worksites where the employer is performing substantially similar work and by deleting section 65(8).

Section 65 of the Code unnecessarily restricts secondary picketing. The BC ban hampers workers' free expression and allows employers to mitigate the economic impact of a strike by redistributing their goods and services to other substantially similar worksites.

The Supreme Court has ruled that secondary picketing is a constitutional right. Secondary picketing is legal under common law and protected by the freedom of expression guaranteed in section 2(b) of the Charter of Rights and Freedom. Over 70 years ago, the Supreme Court of Canda approved secondary picketing as a necessary consequence of allowing picketing under the Trade Union Act, predecessor of the Labour Relations Code.

In *Williams v. Aristocratic Restaurants*, [1951] S.C.R. 762 the Court noted, "The fact that two of the restaurants were not within the unit of employees for which the union was authorized to act does not affect the question; the owner's economic strength is derived from his total business; and it is against that that the influence of information is being exerted."

The majority of other jurisdictions do not restrict picketing in this manner. There is no suggestion that allowing secondary picketing has caused any difficulty for industry or led to widespread labour unrest. Unfair restrictions on secondary picketing relieve economic pressure on employers and may very well result in longer disputes.

We suggest an amendment to section 65 as follows:

> *65 (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),*

(b) 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 that are substantially similar to the "work" noted at subsection 3 and, in all the circumstances, would provide a reasonable substitute for the public, *or*

(c)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…
~~***65 (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.***~~

Recommendation 10: Prevent double breasting

Amend the Code to remove the discretionary nature of common employer applications in construction.

The *Code* should be amended to remove the discretionary nature of common employer applications. In construction, double breasting inherently undermines a union's bargaining rights but it can be very difficult or impossible to prove to the Board's satisfaction that bargaining rights have been undermined. This allows construction employers a broad scope for spinning off or buying a non-union company and slowly transferring their unionised business to that non-union entity.

Recommendation 11: Address the impact of AI and automation on BC's workplaces

Establish a single-issue commission to examine the impact of artificial intelligence and automation on BC's workplaces.

AI and automation are progressing at an incredibly rapid pace. This will have an impact on industries across the board and have significant effects on the workforce. We believe there should be a worker-centered process to examine the impacts and to make recommendations on how to ensure equitable and sustainable employment.

Take, for instance, the film industry, where AI-driven technologies are increasingly used for tasks including writing, special effects, and voice acting. These changes raise significant concerns about job displacement in creative roles.

The potential impact of automation was a major issue at the table in the recent Port of Vancouver strike sending more than 7,400 International Longshore and Warehouse Union (ILWU) members out on the picket line.

A dedicated commission can explore these potential impacts through consultation with stakeholders to better understand the impact of AI and automation and make recommendations from a worker-centered perspective.

Recommendation 12: Better protect workers during restructuring

Strengthen the adjustment plan language in section 54 to better protect workers by requiring negotiated adjustment plans.

The current language in section 54 includes weak language requiring only that the employer and trade union "endeavour to" develop an adjustment plan. Though mediation is available to assist the parties, stronger language requiring a negotiated plan or allowing a mediator to impose one if one is not agreed would better protect workers facing job loss or other significant changes in the workplace.

Improving LRB processes:

Recommendation 13 and 14: Increase funding for the LRB and improve timely access to LRB services and decisions

Provide a significant increase of at least $5 million to the operating funding for the Labour Relations Board. And provide the necessary capital funding to accommodate additional staff and meet technology requirements.

Ensure that the Board has sufficient personnel and resources to meet the timelines established in the Code, to ensure that procedures, services and that decisions are available within a reasonable timeframe.

Despite small operating increases over the past few years, the Board continues to face a shortfall in both operating and capital funding. Managing this through contingency funding does not allow for long-term planning.

The Board has been making positive steps to modernize its services. Major improvements have been made to the Board's website and searchable database of decisions. Improvements have also been made to the Board's office which now offers more reliable basics – like wifi. This is a great start, but more is needed including additional improvements to the case management system.

The Board also needs more staff at every level – vice chairs, mediators and support staff. There are strict timeline requirements in the Act that must be met. When staff are pulled away to adhere to these requirements, other work is delayed. Staffing levels must be sufficient to meet emergent and ongoing needs. Delays in decisions impact both workers and employers. Our affiliates continue to report unacceptable delays when awaiting decisions on critical workplace matters.

Further, the Board needs to lead on equity, diversity and inclusion. It needs to have the capacity to implement equity, diversity, and inclusion strategies at the LRB itself and within the arbitrators' roster. Establishing an arbitration practice continues to be accessible to a limited number of people, systemically excluding those from marginalized groups and those with lower incomes. There are innovative ways the board could support this work, such as developing a mentorship program. Time spent at the Board, gives prospective arbitrators an opportunity to gain experience as a neutral and to get exposure to employer and union representatives. Other strategies to improve representation must be considered and funded.

The Board needs to consider barriers workers accessing its services may face such as language barriers. The Board should consider providing translated materials in the languages spoken by workers in BC. This could include fact sheets and information on its website about workers' rights, services offered and key decisions. Bringing on staff with different language skills would also better support workers who might have language barriers. Services and web content should also include accessible content for people with vision, hearing, or cognitive impairment who may need to access the services provided at the LRB.

Indigenous Rights and Reconciliation

The BC Federation of Labour is committed to Reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration. Labour strongly believes that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.

The BC Federation of Labour and its affiliates are engaged in and support the ongoing and important work of Reconciliation with Indigenous peoples. The *Declaration on the Rights of Indigenous People's Act* passed in BC will require the government to "bring provincial laws into alignment with the UN Declaration and to develop and implement an action plan to achieve the objectives of the UN Declaration in consultation and co-operation with Indigenous Peoples."

We understand this is beyond this review's scope, and a separate process will be required to undertake this work. We look forward to participating in that process and supporting the participation of Indigenous workers.

Our affiliated unions represent thousands of Indigenous workers in every sector of our economy. We know that Indigenous workers are one of the fastest growing demographics in the workforce in BC. We strongly believe that access to unionization and freedom of association is a tool for Indigenous workers to have meaningful input into their wages and working conditions and that collective agreements can provide clear avenues to address bullying, harassment, systemic and structural racism, cultural safety, pay inequity and other forms of oppression too often faced by Indigenous people in our workplaces.

Conclusion:

The BC Federation of Labour appreciates the opportunity to put forward recommendations for improvements to BC's Labour Relations Code.

The regular review of the Code is essential to ensure that it continues to meet the needs of working people in our province, and that it can serve as a tool to level the playing field for some of the most marginalized workers in BC.

We look forward to discussing our recommendations further with you at an in-person presentation.

APPENDIX to the BCFED Submission to the Labour Relations Code Review Panel

BCFED Response to Labour Code Review

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(he/him)

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March 2024

BCFED

moveup

Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 affiliated members across the province of British Columbia.

Appendix: Economic benefits of sectoral and broader-based bargaining

Contents

Introduction and summary

Collective bargaining plays a vital and powerful role in creating conditions for shared, sustainable prosperity. Without collective representation, voice and bargaining power, few workers are able to negotiate effectively with their employers, and thus achieve decent work and living standards. No society in history has achieved inclusive prosperity – whereby most working people have access to comfortable, secure living standards – without widespread collective bargaining.

However, the capacity of conventional Wagner Act-style collective bargaining regimes to fulfil this potential is being undermined by economic, technological, and political changes. Average workplaces have become smaller – which makes traditional workplace-based certification and bargaining systems less viable. Companies have exploited organizational and technological innovations – such as franchising and outsourcing, or platform-based gig work models – to avoid unions and the responsibility to negotiate collectively with their employees. In fact, in many cases these firms deny their workers are employees at all. The tremendous struggles which workers in many such industries (from coffee chains to warehouses to on-demand gig platforms) are forced to undertake just to win basic union recognition and collective agreement coverage, is proof positive that the current system does not ensure meaningful access to these rights. Meanwhile, sectoral changes in the economy are reducing the relative size of traditionally unionized industries (including mining, forestry, and manufacturing). In their place, private service industries have grown, but most have relatively lower bargaining coverage.[1]

The result of these intersecting trends has been a steady and worrisome decline in collective bargaining coverage, concentrated in private sector workplaces. In BC, private sector union coverage has fallen to below 15%. Barely one private sector worker in seven now has access to the protections and benefits of collective bargaining. This erosion of collective bargaining has contributed to income inequality and social polarization.

To counter these worrisome trends, reforming labour laws to facilitate greater use of sectoral, occupational, multi-employer and other forms of broader-based collective bargaining holds great potential to expand collective bargaining coverage and achieve fairer labour market outcomes. Such reforms would also help to make collective bargaining more efficient and effective. This would generate significant economic benefits for workers, employers, industries and the broader provincial economy (even benefiting the provincial government's fiscal situation). Those benefits fall into two broad categories.

First, a major rationale for the introduction of sectoral and broader-based bargaining systems is to extend effective access to collective bargaining to a broader group of workers. A majority of workers in the private sector are effectively excluded from collective bargaining arrangements – because of their location in small or fragmented workplaces, their engagement in insecure or non-standard employment relationships, overwhelming employer opposition to unionization and bargaining, and other barriers to conventional Wagner-style representation and bargaining. For these workers, the economic benefits of accessing collective bargaining through alternative, broader-based channels are similar to the general

[1] The most recent employment forecast from the B.C. government shows that the retail and accommodation/food service sectors will be the third and fourth-fastest growing sources of net employment growth over the next decade (B.C. Ministry of Post-Secondary Education and Future Skills 2023, p. 15), reinforcing this shift toward lower-wage and largely non-unionized jobs.

benefits of collective representation and bargaining already experienced by other workers (through conventional collective bargaining arrangements).

However, in addition to the direct benefits arising simply from the expansion of collective bargaining, a second category of economic benefits arises from specific advantages of sectoral, multi-employer or broader-based bargaining systems. In other words, it is not just that sectoral and broader-based arrangements allow greater access to bargaining: they also provide for the better coordination of bargaining, and the establishment of equivalent benchmarks for wages, working conditions and benefits that apply across entire sectors. In this context, the introduction of sectoral or broader-based arrangements could generate benefits beyond just those workers who cannot presently access collective bargaining at all. Additional benefits would be attained from the application of sectoral practices to industries and occupations which already feature at least some collective bargaining.

This appendix will review both broad categories of economic benefits from sectoral and broader-based bargaining: those associated with the general expansion of collective bargaining coverage, and those arising from the particular features of sectoral coordination. The appendix references abundant published research regarding the correlation between sectoral and broader-based bargaining systems, collective bargaining coverage and economic performance. The appendix also reviews data and analysis regarding the current use of sectoral arrangements in Canada and in other industrial countries – confirming that the practice is common and well-established, and hence, its introduction in British Columbia can be informed by the structures and experience of other jurisdictions.

This review confirms the following main findings:

- International experience shows that coordinated and broader-based collective bargaining systems are associated with higher bargaining coverage than decentralized systems based primarily in individual workplaces.
- Increasing collective bargaining coverage, to ensure that more workers can benefit from collectively-negotiated compensation and working conditions, likely requires the use of sectoral and broader-based bargaining systems.
- Collective bargaining coverage provides workers with consistently stronger monetary and non-monetary employment outcomes: including higher and more equal wages; stronger supplementary pension and benefits; regular and secure channels of voice, communications, and input in workplaces; better access to training; better job security; and more protection against occupational health and safety dangers (including risks such as mental health injuries and workplace harassment).
- In addition to expanding bargaining coverage, sectoral or coordinated bargaining systems often demonstrate superior outcomes in negotiating, implementing and administering collective agreements. Countries with greater reliance on coordinated bargaining systems are able to establish stronger wage norms that apply across industries and occupations; they are more able to attain lower unemployment rates in the long-run, coincident with stable inflation; and they provide extra stimulus to innovation and productivity growth by firms (which are spurred to compete on grounds of quality, productivity and efficiency – rather than trying to suppress compensation costs).

Sectoral, multi-employer, and broader-based bargaining systems in other jurisdictions

International practices

In an exhaustive study of labour relations across industrial countries,[2] the OECD recently developed a rich categorization of collective bargaining systems. This categorization captures the extent to which collective bargaining occurs mostly at the enterprise level (decentralized) versus various forms of sectoral, broader-based or multi-employer bargaining (centralized). It also considers the extent to which bargaining is coordinated across occupations, industries or broader portions of the labour force. The OECD summarized this international diversity in bargaining systems, with the following four broad categories:

1. ***Coordinated centralized systems***: Nine countries in Europe have very structured, centralized collective bargaining systems, in which major negotiations occur at a centralized level (for entire industries and occupations), involving participation by multiple unions and employer associations, often joined by government representatives. The OECD recognizes that the form and intensity of coordination in these centralized systems varies, but they are similar in their shared attempt to coordinate bargaining at the sectoral or national levels.

2. ***Coordinated decentralized systems***: Six countries (also in Europe) possess highly coordinated collective bargaining systems, but which operate in a more decentralized manner. They combine sector-wide provisions with considerable flexibility to negotiate specific terms at the level of individual firms or workplaces.

3. ***Partial sectoral bargaining or coordination***: In five identified countries, collective bargaining occurs primarily at the firm level, but is supplemented by opportunities to negotiate on a sector-wide basis in certain circumstances, negotiate pattern contracts, and/or undertake wage coordination by peak-level union and employer organisations.

4. ***Firm-level collective bargaining***: In this most decentralized category, collective bargaining occurs mostly at the firm level, with little capacity to coordinate bargaining or set broader conditions and benchmarks. Even within many of these countries, however, opportunity exists for multi-employer bargaining: including pattern, sectoral and occupational arrangements extending across many employers.[3]

Table 1 lists the countries belonging to each of these four broad categories of industrial relations systems.

[2] See OECD (2019).

[3] For example, as discussed further below, multi-employer bargaining is common in Canada in many industries, including the construction, manufacturing, education and health sectors. Industry-wide or multi-workplace bargaining occurs in several UK industries (including construction, arts and manufacturing). Industry-level collective bargaining has become common in the Czech Republic following a 2004 labour law reform. These countries are characterized by higher collective bargaining coverage than other countries in the OECD's decentralized category, and this partial use of sectoral and broader-based bargaining systems is important in supporting that higher level of coverage.

Table 1 Major categories of industrial relations systems	
Category	**Members**
Coordinated centralized[1]	Belgium, Finland, France, Iceland, Italy, Portugal, Slovenia, Spain, Switzerland
Coordinated decentralized	Austria, Denmark, Germany, Netherlands, Norway, Sweden
Some sectoral bargaining or coordination	Greece, Ireland[2], Japan, Luxembourg, Slovak. Rep.
Mostly workplace based	Australia[3], Canada, Chile, Czech Rep., Estonia, Hungary, Korea, Latvia, Lithuania, Mexico, New Zealand, Poland, Turkey, U.K., U.S.

Source: Adapted from OECD (2019).

1. Includes two sub-groups: weakly and strongly coordinated centralized systems.
2. Ireland appears in two categories in the OECD taxonomy; we have placed it in this category on the basis of its system of system of sectoral employment orders and joint labour committees.
3. Australia has a unique system of sector-specific minimum wages and labour standards, called the Modern Awards system, which the OECD considers as an alternative to sectoral collective bargaining. However, the Awards system no longer features direct negotiations between employers and unions, and almost all collective bargaining in Australia occurs at the level of individual workplaces.

One very strong conclusion from this international comparison of bargaining systems is that multi-employer bargaining systems of all kinds are associated with notably higher collective bargaining coverage. The widespread use of sectoral and multi-employer systems of all kinds results in a higher proportion of workers in each country covered by the terms of collective agreements. There is a strong and almost monotonic relationship between the availability of multi-employer bargaining systems and the scope of bargaining coverage. With options for multi-employer bargaining, and the ability to negotiate across multiple workplaces, collective agreements can reach a larger share of workers, lifting wages and improving conditions for a broader segment of the labour market.

Table 2 Bargaining systems and bargaining coverage OECD countries					
	Coverage (2018 or latest)	Change since 2010 (or latest)		Coverage (2018 or latest)	Change since 2010 (or latest)
Coordinated centralized			**Some sectoral bargaining / coordination**		
Belgium	96.0%	0.0	Greece	14.2%	-85.8
Finland	88.8%	1.3	Ireland	34.0%	-6.5
France	98.0%	0.0	Japan	16.9%	-1.5
Iceland	90.0%	0.0	Luxemb.	56.9%	-1.5
Italy	100.0%	0.0	Slovak Rep.	24.4%	-15.6
Portugal	73.6%	-4.2	**Average[1]**	**33.1%**	**-6.3**
Slovenia	78.6%	8.6	**Mostly enterprise-based**		
Spain	80.1%	0.7	Australia[2]	22.4%	-11.5
Switzerland	45.0%	3.9	Canada	30.1%	-1.3
Average	**83.3%**	**1.1**	Chile	20.4%	5.0
Coordinated decentralized			Czech Rep.	34.2%	-1.8
Austria	98.0%	0.0	Estonia	6.1%	-9.6
Denmark	82.0%	-0.6	Hungary	21.1%	-6.2
Germany	54.0%	-5.8	Korea	14.8%	2.6
Netherlands	76.7%	-13.9	Latvia	27.1%	-5.8
Norway	69.0%	-5.0	Lithuania	7.6%	-3.3
Sweden	88.0%	-0.7	Mexico	10.0%	-0.2
Average	**77.9%**	**-4.3**	N.Z.	19.2%	3.6
			Poland	17.3%	-1.3
			Turkiye	8.1%	1.2
			U.K.	26.0%	-4.9
			U.S.	11.7%	-1.4
			Average	**18.4%**	**-2.3**

Source: Adapted from Stanford, Macdonald and Raynes (2022), citing OECD Labour Market Statistics, Collective Bargaining Coverage.

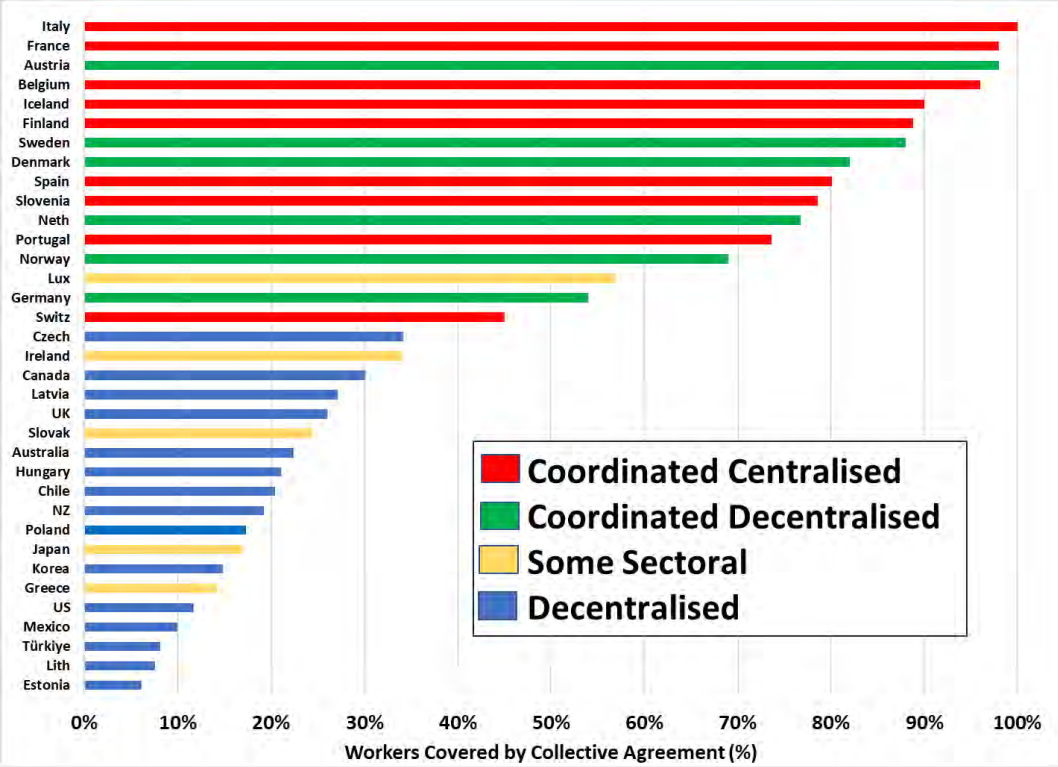
1. Excluding Greece.
2. Includes current federally- and state-registered enterprise agreements.

Table 2 provides data on collective bargaining coverage in OECD countries for 2018 (the latest year for which near-complete data is available[4]), and the change in coverage in each country since 2010. The table is organised into the same four categories of bargaining systems described in Table 1. Countries with coordinated centralized systems have the highest average coverage rate (83%), followed closely by those with coordinated decentralized systems (78%). The group characterised by partial sectoral

[4] Some countries do not report bargaining coverage data each year, so the most recent available data prior to 2018 is reported in Table 3.

bargaining or coordination has average coverage of 33%.[5] Decentralized systems report the lowest average coverage, at just 18%. Canada's coverage rate (30.1% in 2018) was second-highest of all the countries in this category (behind the Czech Republic).

Figure 1. Bargaining Systems and Bargaining Coverage, 2018 (or most recent)



Source: OECD Labour Market Statistics, Collective Bargaining Coverage.

Figure 1 provides visual confirmation that achieving higher bargaining coverage is very much dependent on access to some form of multi-employer bargaining arrangement. The half of countries with above-median bargaining coverage rates is composed exclusively of countries with coordinated systems, whether centralized or decentralized (illustrated in red and green, respectively, on Figure 1). Meanwhile, almost all of the countries with decentralized systems (illustrated in blue) have very low coverage rates. Moreover, within the group of decentralized systems, countries which feature more scope for broader-based or multi-employer bargaining (including the Czech Republic, Canada and the UK) have achieved significantly higher bargaining coverage than other countries in the decentralized category.

About two-thirds of OECD economies have seen collective bargaining coverage decline since 2010, although as indicated in Table 2, that trend is not universal. The coordinated centralized category experienced stable collective bargaining coverage – increasing, on average, by just over one percentage point since 2010. Most countries in the other three categories experienced declining coverage since 2010, with some exceptions. Countries with decentralized systems, but where bargaining coverage grew,

[5] The averages for this group reported in Table 1 exclude Greece, which experienced a radical retrenchment of collective bargaining practices following the global financial crisis I 2008-09: moving rapidly from centralized to decentralized as a condition of structural adjustment measures negotiated with the EU and the IMF.

include Chile, Turkiye, Korea and New Zealand. The decline in bargaining coverage in Canada was relatively modest in this period; again, this likely reflects the partial use of sectoral and broader-based policies in some industries (especially public sector occupations, where collective bargaining coverage has been stable[6]), which has helped to stabilize coverage. However, with Canada maintaining among the highest coverage rates of countries in the OECD's decentralized category, it seems that collective bargaining coverage in Canada is unlikely improve without the introduction of alternative channels for accessing collective bargaining.

The critical importance of multi-employer collective bargaining systems to stronger collective bargaining coverage has been acknowledged by policy-makers in other countries, who have priorised the expansion of collective bargaining coverage as a strategy for lifting wages and improving income equality.[7] In Europe, for example, a new directive from the Council of the EU has instructed EU-member countries to expand collective bargaining coverage toward 80% of employment, as part of an ambitious strategy to lift wages and reduce the incidence of low-wage work across the EU:

> "One of the goals of the directive is to increase the number of workers who are covered by collective bargaining on wage setting. To reach that objective, countries should promote the capacity of social partners to engage in collective bargaining. Where the collective bargaining coverage rate is, for instance, below a threshold of 80%, member states should establish an action plan to promote collective bargaining. The action plan should set out a clear timeline and specific measures to progressively increase the rate of collective bargaining coverage." (Council of the EU, 2022)

As is clear from Table 2 and Figure 1 above, reaching bargaining coverage of 80% would require the widespread implementation of coordinated multi-employer bargaining systems. No OECD countries without such systems have bargaining coverage even close to that 80% level. So the EU directive in effect is instructing its member countries to implement multi-employer bargaining systems in order to attain the desired coverage rate (as argued by Muller and Shulten, 2022).

In sum, the international evidence linking the existence of multi-employer collective bargaining practices with higher collective bargaining coverage is very strong. Countries which aim to expand the scope of collective bargaining coverage, as part of a broader strategy for lifting wages and attaining more equal income distribution, need to include multi-employer bargaining opportunities as a central component in their strategies.

Canadian practices

Sectoral and broader-based bargaining systems are a common and familiar dimension of collective bargaining in many Canadian situations. And in Canada, too, the correlation between broader-based bargaining and higher bargaining coverage is also clear.

Sectoral and broader-based bargaining systems have been implemented in most provinces in a variety of broader public sector activities, including education, health care, social services and public

[6] The decline in bargaining coverage in the private sector, however, has been more severe: private sector bargaining coverage declined by one-tenth (to just 15.5%) in Canada from 2010 through 2023, and by more than one-sixth in B.C. (to 14.6%).

[7] Traxler and Behrens (2002) provide a detailed survey of the mechanisms of collective bargaining extension mechanisms across 20 EU countries.

administration. In most provinces, public sector bargaining is commonly coordinated across multiple worksites, often involving multiple unions and employers (such as individual school boards or hospitals), who coordinate their bargaining engagement through collective union- and employer-side councils. These structures, through which strong collective bargaining relationships are sustained and applied across whole sectors, is clearly an important factor explaining the higher rate of union coverage in public sector work.[8] In Canada, union contracts covered 77% of public sector employment in 2023,[9] and that share has not changed in recent decades. In BC, public sector union coverage equalled 79% in 2023, and that coverage ratio has been similarly stable.

Sectoral, multi-employer and broader-based bargaining structures are also common in many private sector settings in Canada. Examples include construction, film and entertainment production, private transport operations (including owner-operator arrangements in trucking and taxis), cleaners and some manufacturing industries.[10] There is great variety in the history, rationale and specific processes incorporated into these private sector broader-based models. It is not a coincidence that private sector industries where broader-based bargaining is common, are also characterized by higher levels of bargaining coverage. For example, bargaining coverage in the construction industry (where sector-based bargaining is the norm) averaged 31.4% across Canada in 2023 – twice the average for the overall private sector.[11] Other private sector industries where various forms of broader-based and multi-employer bargaining exist include manufacturing (22.9% coverage in 2023) and transportation and warehousing (40.7%). This positive relationship between broader-based bargaining and coverage is self-reinforcing: industries with higher coverage have been able to introduce broader-based bargaining structures, which in turn support continued or even expanded coverage.

It is worth noting the particularly extensive experience with broader-based bargaining models in Quebec. Quebec has a unique "decree" system which established innovative systems for negotiating and extending collective bargaining provisions across specified occupations and regions, in which collective bargaining would otherwise be unlikely to occur. Examples include private security services and motor vehicle maintenance shops.[12] In addition, Quebec's construction industry has a well-developed sectoral structure. Other channels for multi-employer or sector-wide collective bargaining have also been established in Quebec, including a unique system for province-wide collective bargaining for self-employed workers in home-based childcare centres.[13] In light of this experience, and with continuing support within the Quebec industrial relations system for innovation with broader-based bargaining systems, it is no surprise that private sector union coverage in Quebec in 2023 (23% in 2023) is significantly stronger than in any other province.

Across both industries and across provinces, therefore, the correlation between sectoral and broader-based bargaining systems and union coverage is clear in Canada – just as is true in the international data.

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[8] Other factors contributing to higher union coverage in public sector roles include more conducive employer attitudes to collective bargaining in many cases, the higher average educational qualifications of public sector employees and reduced exposure to private competitive pressures.
[9] Calculations from Statistics Canada Table 14-10-0070-01.
[10] A survey of broader-based bargaining models including in many private sector applications is provided by Mitchell and Murray (2017); see especially pp. 352-368.
[11] Calculations from Statistics Canada Table 14-10-0070-01.
[12] For more details on the history and workings of the "decree" system, see Jalette (2006) and Unifor (2015).
[13] See CBC News (2020).

Where collective bargaining can be solidified within the framework of ongoing broader-based and multi-employer arrangements, they are less vulnerable to the efforts of employers to evade or defeat union representation and bargaining. Moreover, the application of established bargaining procedures to new workplaces that fall within defined sectors ensures that bargaining coverage grows with the overall level of sectoral employment. Particularly in private sector workplaces, sectoral bargaining arrangements seem critical to attaining and maintaining a critical mass of collective bargaining coverage – so vital to the ability of workers to negotiate better compensation and better jobs.

General economic benefits from extending bargaining coverage

The preceding section described the clear correlation – both internationally and across Canadian provinces and industries – between sectoral and broader-based collective bargaining systems and bargaining coverage. A major motive for pursuing the implementation of such structures in BC is precisely to extend the effective ability to use collective bargaining to a broader range of BC's labour force. This is particularly important in private sector industries, especially those characterized by small, dispersed, or fragmented business structures and workplaces. At present, workers in many of these private service sectors (such as food service, warehousing and on-demand platforms) must confront daunting obstacles – not least being the unremitting efforts of employers to defeat and evade collective bargaining responsibilities, even shutting down locations or franchises which manage to unionize despite the odds – to winning access to basic representation and bargaining rights.

In this context, one major category of economic benefits from sectoral and broader-based bargaining systems derives simply from the fact that more workers (including in these fragmented private service industries) will have access to collective bargaining. There is a vast international research literature attesting to the positive impacts of collective representation, collective voice and collective bargaining for both the well-being of workers, and the quality and success of workplaces. This section briefly summarizes several of the major channels through which broader collective bargaining coverage can benefit workers, employers and the economy.[14] Collective representation and bargaining coverage, giving workers more say in their workplaces and opportunity to negotiate improved compensation and conditions, is not only important to the well-being of workers directly covered. There is abundant evidence that collective representation and bargaining coverage contribute positively to broader economic and social outcomes, in many ways.

Wages

A central benefit of collective bargaining is it allows workers to counter-balance the disproportionate bargaining power of employers in setting wages and other components of compensation. On an individual basis, few workers possess leverage to negotiate wages that keep pace with their skills, efforts and productivity: the "cost of disagreement" facing an employer who prefers not to improve wages for any individual worker is small, limited to the possibility that that individual might quit. Collective bargaining evens the scales, allowing workers to impose a more significant cost of disagreement on employers (up to and including work stoppages if necessary to win a better outcome), and thus attain a more balanced wage structure.

[14] For more detailed surveys of the economic benefits of collective representation, voice and bargaining coverage, please see Stanford and Poon (2021), Wilkinson et al., (2020), Bennet and Kaufman (2007), and OECD (2019).

In Canada, median hourly wages for workers covered by a collective agreement were 27% higher in 2023 than for those with no contract.[15] In BC, this union wage premium is similar (25%). The union wage premium has narrowed since the turn of the century; one key reason is the significant increases in minimum wages implemented in most provinces (including BC) over the last decade, which has significantly and positively lifted median wages for non-union-covered workers. Nevertheless, the impact of collective bargaining on wages remains strong, and is vitally important for maintaining a sustainable balance of income distribution between labour and other factors of production.

Recent research on the problem of monopsony power in labour markets (whereby large and concentrated employers can exert a negative wage-suppressing influence on labour markets due to their large size) attests to the importance of workers having countervailing power to negotiate better wages.[16] In the case of monopsony, the ability of collective bargaining to lift wages serves a dual purpose, since it can simultaneously lead to both higher wages and higher employment: since the incentive for large firms to limit employment in order to suppress wages is dissipated when wages are set through negotiation rather than employer preference.

Income distribution and inequality

Empirical evidence confirms that collective bargaining leads not only to higher wages, but also more equality in wage incomes – both within workplaces and across broader society.[17] There are many dimensions to this equity-promoting effect of worker voice and agency. Jaumotte and Buitron (2015) show that reduced inequality results from both lifting the bottom of the wage distribution (by raising wages for lower-income workers) and curtailing excessive growth at the top (limiting escalation of salaries and bonuses for executives and other elites).[18] Freeman et al., (2015) show that higher wages resulting from unions and other wage-regulating institutions result in greater intergenerational mobility, by facilitating more economic opportunity for the children of workers who benefit from these structures. Other dimensions of inequality are also ameliorated by stronger union representation and collective bargaining, including gaps in household wealth[19] and racial inequality – since the benefits of union-negotiated benefits are especially important for Black, Indigenous and workers of colour.[20] Across all of these dimensions, union representation plays an important role moderating the economic and social consequences of growing inequality in Canadian society.

Health and safety

By ensuring regular channels of input and communication, including standing joint health and safety committees and related structures, unionized workplaces are best able to monitor emerging health and safety threats, educate both workers and managers on how to prevent risks and pressure employers to

[15] Calculations from Statistics Canada Table 14-10-0066-01.
[16] See Naidu et al. (2018) and U.S. Department of the Treasury (2022) for more theoretical and empirical evidence on the impacts of employer monopsony power.
[17] Important contributions to this finding are Blanchflower and Bryson 2010; Eidlin 2016; and Card, Lemieux, and Riddell 2018.
[18] Doorey and Stanford (2023) provide empirical data for Canada attesting to the impact of unions in moderating incomes for the richest segments of society.
[19] See Weller, Madland, and Powell (2016).
[20] See Rosenfeld and Klaykamop (2012) and Weller and Madland (2018).

undertake pro-active investments in prevention and care.[21] This applies to newly emerging occupational risks, such as repetitive strain injuries, mental health injuries and exposure issues. Union representation is also effective in the increasingly important area of public health education and protection, as evidenced so dramatically during the COVID-19 pandemic. By providing a reliable and trusted voice in workplaces around public health issues (including contagion prevention, vaccinations, etc.), and providing workers with assured channels for implementing health practices, union representation constitutes a critical asset in helping to build safer, healthier workplaces and communities.[22]

Productivity

Abundant empirical research confirms that labour productivity and efficiency are improved in the context of collective representation systems that provide for workers' regular voice and input, and close-off lower-productivity cost-minimizing employment strategies.[23] These positive productivity effects are stronger when managers are encouraged or compelled to listen and respond to workers' input and demands, rather than being allowed to ignore or obstruct these processes (as is often the case in non-union workplaces, where workers' input is dependent on managers voluntary discretion). One channel through which collective representation contributes to productivity is through improved employee retention (discussed further below). But there are many other links between union coverage and productivity. The existence of more stable jobs and better compensation (associated with unionization and other formal structures of worker voice) encourages employers to adopt more skill- and capital-intensive business strategies. It also curtails the use of "low-road" business strategies based on labour cheapening and insecure employment models, which are associated with lower productivity.[24] By collecting information on worker experiences and preferences, stronger voice mechanisms also induce better staffing decisions and management practices that improve morale and cooperation in workplaces, and further boost firm performance. And by lifting wage levels, collective bargaining provides a spur to labour-saving technological change and innovation, that reinforces productivity growth.

Turnover and retention

Workers who are more satisfied with their work arrangements, conditions and compensation are more likely to stay in their positions, reducing costs of turnover, recruitment and training. Canadian data indicate that satisfied workers are 17% more likely to stay in their current job than those who are not.[25] Worker satisfaction is also closely linked to having more control over working hours and conditions. Avoidable turnover can add tens of thousands of dollars per year to labour costs per worker. Unfortunately, Canada's labour market is currently marked by very high levels of job turnover and churn. About one-fifth of Canadian workers start new jobs in any given year; in some low-wage, less appealing industries, turnover is much higher. Canada's accommodation and food services – with among the lowest union coverage rates of any industry in Canada – has by far the highest turnover and shortest average job tenure of any industry. Average tenure in this sector in 2023 (52 weeks) was less than half as long as

[21] For example, Zoorob (2018) finds a one percentage point decline in union density is associated with a 5% increase in the incidence of workplace fatalities.
[22] Soares and Berg (2023) provide strong evidence of the impact of unionization in reducing mortality from COVID-19 in the US. If unionization had maintained its postwar peak level in the US (35% density in the mid-1950s), the national mortality rate would have been reduced by over one-quarter.
[23] See, for example, Addison et al., (2007); Bart et al., (2020); Huebler and Jirjahn (2001); and Jirjahn (2014).
[24] See Kochan and Kimball (2019).
[25] See Martin (2018).

highly unionized industries (such as utilities, transportation, education and health care).[26] This ongoing flux, driven in part by dissatisfaction among workers with their jobs (as well as the insecurity of precarious positions) adds to labour costs, underutilizes skills and training and undermines productivity.

Macroeconomic performance

Paid work is the most important source of personal income in Canada, and personal consumption spending is the largest component (by expenditure) of GDP. So by lifting total incomes, collective bargaining also strengthens aggregate demand conditions, economic growth and job-creation. A more equal distribution of income has an additional, secondary effect on aggregate demand: by shifting more income toward those at the lower end of the distribution ladder, who have a higher propensity to spend (rather than save) that income, total spending is boosted. In most industrial countries, redistribution of income toward lower-income households will produce a net boost to aggregate demand and economic growth, thanks to the higher spending propensity of lower-income households.[27]

Quality of care and service

Workers who have a greater say in working conditions and work organization are also more likely to be able to deliver higher-quality output. This is especially clear in various service occupations, where quality is at least as important as quantity in measuring productivity. In human and public service jobs, for example, workers who are empowered with voice, representation and job security are better able to demand practices and improvements that facilitate better quality service delivery – benefiting both the workers and the clients they serve. A timely example of this effect was provided during the COVID-19 pandemic: rates of mortality in privately-run long term care facilities (largely non-unionized) were much higher than in non-profit or publicly-owned centres (most of which are unionized).[28] Long-standing research in other human service industries (such as health care and childcare) also confirms the positive link between union representation, job stability, compensation levels, reduced turnover and the quality and safety of service delivery. A similar benefit is visible in many private service jobs, too. Rapid job turnover, poor training, low wages and irregular work schedules all undermine the quality of service in many low-wage private sector roles – including hospitality, personal services and retail trade.

Other benefits

International research has documented and quantified many other spin-off benefits that flow from collective representation, voice and bargaining. Better wages, more stable jobs and the provision of supplementary pensions and benefits means that workers in better jobs pay more taxes, and have less need to rely on public programs and income supports; the net impact on government fiscal balances of broader collective bargaining is thus positive.[29] Empirical evidence indicates that workers with more control over their working hours have better sleep patterns, better mental and physical health, less use of prescriptions and stronger family relationships.[30] US research has found that unionized workers with

[26] Statistics Canada Table 14-10-0054-01.
[27] Lavoie and Stockhammer (2012) provide
[28] See Stall et al., (2020) and Armstrong and Cohen (2020).
[29] See Sojourner and Pacas (2019).
[30] See Peetz (2019), pp. 185-186.

better-paid, more secure jobs are also less likely to die from suicide or overdose[31] – a finding that is especially relevant in the context of BC's continuing opioids crisis.

Broader collective representation and bargaining coverage can even translate into stronger democracy. Research suggests that when politicians face organized worker voices in their constituencies, they are less likely to be swayed by the concerted influence of wealthy elites; this advances the democratic principle of "equal responsiveness."[32] The skills and experience that workers learn through participation in workplace systems of voice and representation (associated with union-covered workplaces) enhance their confidence and capacity to participate ion broader democratic processes outside of the workplace.[33] Finally, US research suggests that collective representation (leading to both enhanced channels of workplace dialogue, and higher and more equal wages) helps to reduce racial resentment among white workers, improve internal solidarity and cohesiveness in workplaces and reduce the extent of racial and social polarization in the broader community.[34]

Through all of these channels, therefore, broader coverage by collective bargaining arrangements and related structures and practices (including channels of internal voice and representation, health and safety committees and other structures) can advance a wide range of economic and social goals: from stronger wages, more economic equality and safer, more productive workplaces, through to diffuse benefits such as inclusive communities and stronger democracy. In this context, actively facilitating collective bargaining should be a policy priority for any government concerned with those issues. And given the clear correlation between sectoral and broader-based bargaining systems, and stronger collective bargaining coverage, implementing opportunities for sectoral and broader-based bargaining is an obvious means of promoting stronger bargaining coverage.

Specific advantages of sectoral and broader-based bargaining systems

As discussed above, the most obvious and direct economic benefits resulting from sectoral and broader-based bargaining systems arise from their evident value in supporting greater extent of collective bargaining. This allows the well-documented benefits of collective bargaining to be experienced across a broader segment of the labour market.

However, there are additional, incremental economic benefits which result from sectoral and broader-based systems, in addition to the general benefits of extending access to broader collective bargaining. In essence, these additional benefits reinforce and amplify the gains achieved through expanded bargaining coverage. Not only is coverage broadened, and thus more accessible to more workers (including those in occupations and workplaces effectively barred from collective bargaining via conventional Wagner Act processes), but bargaining itself can become more effective and efficient. In this section, we briefly describe several ways in which sectoral and broader-based bargaining systems can generate additive economic benefits:

[31] See Eisenberg-Guyot et al., (2020).
[32] See Becher and Stegmueller (2020).
[33] See Patmore (2020).
[34] See Frymer and Grumbach (2020).

More focused, coordinated bargaining

In industries where collective bargaining is widespread but dispersed and uncoordinated, multiple bargaining processes can overlap, conflict and/or result in more frequent and unpredictable work stoppages. This is particularly true when major facilities incorporate multiple collective agreements covering different groups of workers (across occupation or function). Indeed, an important motive for the past introduction of sectoral or broader-based bargaining systems in many industries in Canada (including construction, education and health care) was precisely to build a more consistent and predictable bargaining system out of disparate and fractured decentralized arrangements, and thus reduce the frequency of disputes.

Another advantage of focused, coordinated bargaining is that it allows both parties in negotiations to concentrate their resources (including leadership attention, research, legal resources and other inputs) at particular points in time. This ensures that bargaining is well-resourced, supported by adequate attention and resources on both sides. Economies of scale in the costs of bargaining can also be attained by concentrating bargaining around larger, more concentrated tables, rather than dealing with a broad and overlapping portfolio of smaller negotiations.

Level playing field

Sector-wide bargaining arrangements aim to establish benchmarks for wages, working conditions and other key dimensions of employment that would apply evenly across all players in a given industry, region or occupation. This provides a more consistent, transparent and reliable footing for all parties to enter into employment relationships.[35] It also channels competitive pressure between firms into more useful and productive directions: instead of competing with each other to find new ways of driving down labour costs (in a "race to the bottom"), firms are steered toward more genuine improvements in efficiency, technology and innovation, to the benefit of employers, workers and consumers. Common sector-wide standards facilitate increased mobility across workplaces or employers within any industry, since any worker can be confident they will achieve similar compensation and conditions if they find a new role within the industry. This is useful for industries that are adapting to technological, economic or demographic change. European research confirms that under sectoral bargaining arrangements, firms are more adapt at responding to shocks and disruptions, while providing employers with enhanced confidence regarding reliable labour supply and stable labour costs.[36] With the establishment of clear sector-wide standards, and well-resourced bodies for implementing and overseeing those standards, responsibility for monitoring and enforcing labour standards can be taken up, in the first instance, by unions and employers (often operating through respective councils), instead of under-resourced employment standards departments of government. This enhances confidence that the agreed, uniform standards will be respected on all sides.

Training and qualifications

Sectoral and broader-based bargaining regimes can facilitate stronger, more uniform and more reliable training and qualification systems for sectors and occupations. By providing structures through which workers, employers, educational institutions, professional regulatory bodies and other stakeholders can discuss training needs, design and implement training and qualification standards and support

[35] Glass and Madland (2022) discuss these benefits in the context of recent innovations in sector-wide wage boards in various U.S. states and cities.
[36] See Marginson et al. (2014).

workplaces to ensure that skills and training benchmarks are well-known and achieved, sectoral bargaining systems can lift and harmonize skills and certification performance across broad industry and occupational groupings. This benefit is visible in other industries with well-established broader-based bargaining systems. In construction, for example, skills and apprenticeship requirements for specific building trades are defined and enforced through collective bargaining and contract administration. In many broader public sector activities (such as health care and allied services), sectoral bargaining tables also serve as a vehicle for defining, monitoring and improving skill and qualification expectations. Quebec's decree system has also been paired with sector-wide training and certification standards.[37] When these standards are set on a consistent sector-wide basis, employers can be sure that new recruits meet accepted standards. For workers, mobility across employers is enhanced by the existence of uniform and transparent standards and certifications. Moreover, by negotiating pay progression systems that are tied to these industry- or occupation-wide training standards, workers can be certain their investments in their own skills and qualifications will reliably pay off in better incomes and increasing responsibilities – thus enhancing the incentives for skills acquisition.

Boost to innovation and productivity

With wage and compensation benchmarks established across whole sectors or occupations, the innovative and entrepreneurial efforts of employers can be better channeled into more productive and socially useful channels. For one company to gain an edge over its competitors, management attention must now be directed toward other strategies – instead of pursuing strategies to reduce labour costs through more exploitive terms and conditions. Evidence from Europe indicates that sector-wide and broader collective agreements facilitate positive, technology-intensive innovation strategies, with corresponding benefits for productivity performance.[38] Improved training, job retention and income security provided under sector-wide agreements has also been found to contribute to productivity growth.[39] Enhanced workforce stability can also help employers achieve more stable workforces, with assured qualifications and capabilities (thanks to the universal application of consistent standards for training and qualification).[40]

Applications to non-standard employment

There are numerous industries in the BC economy marked by working arrangements for which conventional collective bargaining arrangements are difficult to organize and maintain. Despite those challenges, some such industries have a long and successful experience with collective bargaining. Even for workers in self-employed or contractor positions, collective bargaining can even the scales with purchasers or contracting firms and improve compensation and working conditions. Examples include collective bargaining for self-employed or owner-operator workers in fishing, forestry and trucking. Most often, given the fragmented nature of these industries, these arrangements must apply to multiple employers or across entire sectors.

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[37] In the decree covering vehicle maintenance facilities in Montreal, for example, the "Parity Committee" which negotiates and implements the decree also establishes standards for mechanic certification tied to respective pay grades.

[38] See da Silva Bichara et al., (2023) for recent evidence.

[39] Benassi and Wright (2023) review data from numerous OECD countries to find a positive correlation between sectoral bargaining and productivity.

[40] See Roberts (2021) for examples.

The growth of non-standard or precarious employment arrangements requires that the application of collective bargaining structures to nominally independent producers will become more important in the future. A specific current example is the case of platform-based work-on-demand workers, whose access to traditional collective bargaining processes is limited by virtue of their supposed "contractor" status, the dispersed nature of their work, and very high turnover among participants. It is difficult to imagine how compensation and working conditions for these workers could be improved without access to some form of broader-based collective bargaining. Possible models would involve elected representatives of platform workers negotiating terms with platform firms, that would then apply to all workers engaged through the business.[41]

Macroeconomic outcomes

More coordinated collective bargaining systems can also exert a positive impact on broader labour market and macroeconomic outcomes. The OECD's recent review of collective bargaining systems (OECD, 2019) explored these impacts. Researchers used multivariate analysis to compare labour market outcomes across the various categories of labour relations systems identified above. The report showed that coordinated multi-employer bargaining systems achieve better employment and unemployment outcomes than decentralized firm-level systems. It also concluded that multi-employer options achieve greater equality and economic inclusion. As the OECD summarizes:

> "Co-ordinated systems are shown to be associated with higher employment, lower unemployment, a better integration of vulnerable groups and less wage inequality than fully decentralized systems. Weakly co-ordinated, centralized systems and largely decentralized systems hold an intermediate position, performing similarly in terms of unemployment to fully decentralized systems, but sharing many of the positive effects on other outcomes with co-ordinated systems." (OECD 2019, p. 113)

Multi-employer bargaining, therefore, opens the possibility of achieving stronger macroeconomic and distributional performance. When collective bargaining is coordinated on a sectoral or economy-wide basis, there is no trade-off between bargaining progress and aggregate employment. To the contrary, coordinated multi-employer bargaining is associated with better employment outcomes.

This finding is especially important in the context of current concerns in Canada and other industrial countries with inflation, in the wake of supply chain disruptions and the other after-effects of the COVID-19 pandemic. Coordinated bargaining allows all parties to negotiations (including employers, unions and where relevant government) to respond to shocks like the recent inflationary cycle with a longer-term, more collaborative process. This is better that letting stakeholders fight each other for their best possible outcome, in hopes of protecting their own interests amidst macroeconomic uncertainty. Coordinated bargaining can thus facilitate longer-term deals that restore real wages for workers (which fell as a result of recent inflation), but in a gradual manner that does not exacerbate that inflation. Strong and coordinated collective bargaining, in this context, can play a positive role in stabilizing macroeconomic and inflation conditions.

[41] Collective bargaining arrangements for platform workers have been implemented in several European countries, generally with application across multiple firms or platforms; see Stewart and Stanford (2022) for details.

Conclusion

International and Canadian evidence confirms that expanding sectoral and broader-based bargaining is essential for arresting the decline in bargaining coverage and ensuring that more BC workers have access to basic representation and bargaining rights – and the economic and social progress they can facilitate. Expanding bargaining coverage will usher in a broad portfolio of economic benefits: including higher and more equal wages, better health and safety practices, spurs for productivity growth, reduced employee turnover and better access to training. Moreover, specific features of broader-based and sectoral bargaining systems hold out the prospect of more efficient and effective bargaining, even for workers who are already covered by conventional collective bargaining. These include making bargaining more focused, predictable and better-resourced; facilitating bargaining for workers in non-standard employment relationships; and creating transparent and fair benchmarks for wages, qualifications and working conditions that apply across entire sectors, hence enhancing stability and best practices in all workplaces.

For all of these reasons, the development of new certification and bargaining processes to facilitate sectoral, broader-based and multi-employer collective bargaining systems should be a top priority for future labour law reform in BC. There is a growing consensus among industrial relations experts in Canada[42] and internationally that this will be necessary for bringing the benefits of collective bargaining to workers who at present are denied that opportunity and ensuring that collective bargaining will continue to contribute to a fairer, more inclusive economy and society.

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VIA EMAIL

Labour Relations Code Review Panel
Sandra Banister, K.C.
Michael Fleming
Lindsie Thomson

lrcreview@gov.bc.ca

March 21, 2024

To: BC Labour Relations Code Review Panel

RE: BCFMWU SUBMISSION TO THE BC LABOUR RELATIONS CODE REVIEW PANEL

To the esteemed members of the British Columbia Labour Code Review Panel, I present this communication to address two crucial issues on behalf of the nearly 5000 members of the BC Ferry & Marine Workers' Union.

Firstly, the imperative for timely and efficient arbitrations within the labour code framework for labour disputes, and secondly, the contentious topic of right to strike restriction provisions within Collective Agreements.

Recognizing the significance of these matters in safeguarding workers' rights and promoting harmonious industrial relations, it is paramount to consider the impact of the current labour relations code in British Columbia and ensure equitable resolutions and sustainable labour practices for all stakeholders involved. With an eye to BC Labour Code improvements the BCFMWU submits the following:

(A) TIMELY AND EFFICIENT ARBITRATIONS

Introduction

1. Like all unions in B.C., the BCFMWU has experienced significant delays in the adjudication of grievances outside of the existing s. 104 expedited arbitration processes in the *Code*. Large employers use senior counsel for all matters and are very rarely willing to schedule a hearing for less than three days. With the busy calendars of arbitrators and counsel, hearing dates are frequently scheduled a year or more after the date of referral to arbitration.

2. Compounding the problem is the inefficiency of hearings, often caused by employer counsel calling various witnesses and extrinsic evidence on even minor interpretation disputes. This can cause significant further delays as it can mean that hearings do not complete in the time scheduled and cannot be rescheduled for several months more.

3. The BCFMWU is seeking amendments to the *Code* to:

(a) facilitate a more efficient arbitration process for unions and employers to utilize for more minor matters of contract interpretation or discipline; and

(b) amend s. 104 of the *Code* to allow a party to refer the matter to expedited arbitration at a later stage in the process under certain circumstances.

Supporting Decisions and Articles

4. There have been numerous articles and arbitration awards, across a variety of formats and jurisdictions in Canada, written about how problematic delays within the labour arbitration process are and indicating that this problem is continuing to get worse with time.

5. In Paul Weiler's 1980 book "Reconcilable Differences", upon which much of B.C.'s legislative model of labour relations is based, he discusses how labour arbitration was developed as an efficient dispute resolution mechanism, instead of using the court system. Weiler notes that it was for "accessibility and competence…the ordinary court system has proved itself formal, time-consuming, and expensive…Often it takes years to get a case to trial (during which period a discharged employee, for instance, may be left without a job)." (p 92). Weiler notes, even in 1980, that as processes become more formal, the cost increases.

6. In 2018, Shannon R Webb and Terry H. Wagar wrote "Expedited Arbitration: A Study of Outcomes and Duration", published in *Industrial Relations*. The authors studied 554 expedited and traditional labour arbitrations cases from BC and Ontario. The article begins by discussing how labour arbitration was created "to combat delays, costs, and inefficiencies in the traditional court structure" (p 146) but is now criticized for failing to meet those goals. This led to the proposal of an expedited arbitration process.

7. In a study from 2014, Curran found that the average time from when a grievance is filed to when it is resolved has increased significantly. In 1994 it was 394.12 days; in 2004 it was 448.5 days; and in 2012 it was 730.03 days (p 148). The authors note that there are delays both before and after a hearing but the most time-consuming delays are often before the hearing due to difficulty in finding dates or intentional delay tactics (p 148). The authors note that expedited arbitration was created to address concerns about delays (p 151). The study ultimately found there were many advantages to using the expedited arbitration process compared to the traditional one, due to the delays in regular arbitration.

8. A 2013 article, "The Promise of Labour Arbitration: Delayed but not Forgotten" was written by Ian Mackenzie, who was an adjudicator for 22 years in Ontario and federal tribunals. Mackenzie summarizes some of the work of others who have commented on the delays, which I also include below. Mackenzie mentions that delays due to the availability of parties and arbitrators was a concern for

counsel, as well as the "challenges in scheduling continuation dates". This leads some grievors to make "decisions about settlements based almost solely on the lengthy delays in finishing hearings".

9. The Honourable Warren K. Winkler, Chief Justice of Ontario, presented a speech at Queen's University on November 30, 2010. Winkler discusses how labour arbitration "was intended to be a procedure through which disputes could be resolved in a timely way, on the merits, in an affordable fashion, and with finality". Justice Winkler reflected on the changes that have occurred to labour arbitration over the years, stating that "[n]ow the hearing can take a year and a half or two years, with several adjournments, and it is so technical that nobody can understand the issues, which are not decided on the merits but with decisions thirty-five pages long issued six months later. This is not labour arbitration; it is labour dysfunction."

10. Justice Winkler suggests removing some of the steps from the process in order to improve the timeliness and affordability of the process.

11. Ronald A. Pink and David C. Wallbridge wrote a paper, "The Future of Labour Arbitration" for the 2010 Administrative, Labour and Employment and Privacy and Access Law Conference. This article has a pretty harsh outlook, blaming lawyers for making the process complicated and expensive. The authors discuss how the busy schedules of lawyers and arbitrators delays cases and the resulting decisions. The authors also suggest various solutions, including the need for expedited arbitration.

12. In *Sugar Mountain Productions Ltd v Teamsters, Local 155*, 84 CLRBR (2d) 143, 2002 CarswellBC 3395 the BC Labour Relations Board stated that "The goals of grievance arbitration in our labour relations system are well known. Arbitration is supposed to be an efficient process, which produces meaningful resolutions of the parties' disputes under their collective agreement. The process was designed to be less formal, costly and time consuming than other litigation processes. This was seen as a key part of a functioning industrial relations system" (at para 24). The Board then said that specifically the film industry was not meeting those goals.

13. In *Sunlover Holding Co and VCTA (Unifor), Re*, [2016] BCWLD 3375, BCCAAA No. 24 Arbitrator James Dorsey noted that the union and employer had agreed to proceed with the arbitration in an expedited manner. Dorsey stated that "[a]rbitrators are very mindful that labour relations delayed is labour relations defeated and denied" (at para 51).

14. Arbitrator David C McPhillips stated in *Flavelle Sawmill Co and IWA-Canada, Local 1-3567 (Yourchik), Re*, [2004] BCCAAA No 159, 78 CLAS 78 that "[t]he basic premise in labour relations is that grievances should proceed expeditiously to arbitration. Certainty, efficiency and finality are to be encouraged and the integrity of the arbitration process is critical. As Arbitrator Orr observed in Fording Coal Ltd., supra, at para 49 'it is a fundamental principle of arbitral jurisprudence that dispute resolution should proceed in a reasonably expeditious manner for the good conduct of labour relations and the proper management of the collective agreement'" (at para 28).

15. The BC Labour Relations Code was last reviewed in 2018 and amended in 2019. A panel involving Michael Fleming, Sandra Bainster, and Barry Dong was appointed to provide the recommendations. The final report discussed how the delays within the arbitration process "were concerns frequently expressed during the public consultations" (p 29). The report stated that arbitration is "no longer expeditious, efficient or inexpensive" (p 29). The authors indicated that "[m]ore complicated pre-hearing

issues, discovery, disclosure and pre-hearing motions all contribute to delay" (p 29). They acknowledged that some individuals wanted to amend the Code to require that arbitrations be completed within 6 months but indicated that the solution would need to be more complex. The report indicates that the 1992 suggestions recommended expedited arbitration, which led to section 104. The 2018 report noted that 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."

16. Despite amendments to s. 104 that resulted from the 2018-2019 review, the BCFMWU has continued to experience frustration with the process. The decision to refer a matter by s. 104 or the Collective Agreement process must be made almost immediately following the conclusion of the grievance steps. Sometimes, however, the potential for significant delays in a hearing process or arbitrator appointment are not apparent until after a matter has been referred under the usual route.

Proposed Code Amendments re Timeliness and Efficiency

17. First, the BCFMWU proposes the following amendments to subsections (2), (3) and (4) of s. 104 the *Code* to allow referral to s. 104 in circumstances of delay:

> 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, either
>
> (b) the application is made within 15 days of the completion of the steps of the grievance procedure preceding a reference to arbitration, or
>
> (c) if the potential for delays in the hearing of an arbitration is identified by a party following the referral to arbitration but before appointment of an arbitrator, within 15 days of the party identifying the potential for delay.
>
> (3) Except as provided under s. 104(2)(c), 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
>
> (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, within 14 days of the referral, appoint an arbitrator to hear and determine the matter arising out of the difference…

18. Second, the Union proposes the inclusion of an additional process for expedited adjudication under the *Code* in addition to ss. 104 and 105, to allow for efficient resolution of less significant interpretation or discipline disputes. The following model is a suggestion. From our perspective it is not essential that it include all components as proposed below:

> **105.1** (1) A party to a collective agreement may refer certain differences respecting its interpretation, application, operation or alleged violation to the director for resolution by expeditious and informal 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,
>
> (b)the application is made within 15 days of the completion of the steps of the grievance procedure preceding a reference to arbitration,
>
> (c) the difference has not been referred to arbitration under the collective agreement by the party who wishes to refer it under this section,
>
> (d) the dispute is either a disciplinary matter except termination or is an interpretation issue without significant and immediate potential financial consequences for the parties, and
>
> (e) there are no exceptionally complicated issues necessary to the determination of the dispute by an arbitrator.
>
> (3) Within 7 days of the referral of a dispute under this section:
>
> (a) the director must appoint an arbitrator, and
>
> (b) the parties must provide a submission of no more than two pages, summarizing their position on the dispute and whether the matter meets the criteria under subsection (2).
>
> (4) An arbitrator appointed under subsection (3) has all the power and jurisdiction of an arbitrator appointed under this Code or the collective agreement between the parties to the difference.
>
> (5) Within 7 days of appointment of an arbitrator under subsection (3), the arbitrator must, based on the submissions received under subsection (3)(b) and any further submissions or statements the arbitrator requires of the parties, decide whether the meets the requirements of subsection (2). Such determination is not subject to review.

> (6) Without limiting subsection (4) and sections 82, 89 and 92, an arbitrator appointed under subsection (3) has the power to and must make an order facilitating compliance with subsection (5) that:
>
> (a) sets the date of the hearing;
>
> (b) limits the time allowed for the parties to present evidence and for oral argument at the hearing;
>
> (c) limits references by the parties to legal authorities; and
>
> (d) establishes procedures designed to facilitate an expedited decision.
>
> (7) The arbitrator appointed under subsection (3) must issue a decision with written reasons not exceeding 7 pages within 30 days after the conclusion of the hearing unless an oral decision has been issued under paragraph (a) of this subsection and the parties agree that written reasons are not required.
>
> (8) 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.
>
> (9) Except as provided in subsection (5), 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
>
> (10) Subsections (5), (6) and (7) of this section do not apply if the arbitrator appointed under subsection (3) determines that the dispute does not meet the requirements of subsection (2). In such circumstances, the dispute shall be deemed to have been referred to arbitration under the collective agreement.

19. In the alternative, or in addition to the above proposed amendments, one amendment to the *Code* which could promote the efficient and expedited resolution of disputes, would be to require parties to a collective agreement to include a term allowing a party to unilaterally refer a grievance to a contractually agreed expedited arbitration process, provided certain criteria are met.

(B) RIGHT TO STRIKE

20. The BCFMWU has been unable to engage in its constitutionally protected right to strike since 2007 because of a provision imposing interest arbitration by mediator/arbitrator Vince Ready in that round of bargaining (*British Columbia Ferry Services Inc. and BCFMWU, Re* 2007 CarswellBC 3775, [2007] B.C.C.A.A.A. No. 85, 89 C.L.A.S. 132).

21. Article 35.02 of the BCFMWU Collective Agreement provides for the establishment of a “permanent collective bargaining dispute resolution panel” required to be engaged by the parties if the reach an impasse for “final and binding arbitration.”

22. The result of Article 35.02 is that the BCFMWU is contractually bound to enter into interest arbitration rather than exercise the right to strike permitted under s. 65 of the *Code* and can only remove this contractual barrier to exercising the constitutionally protected right to collective job action if an interest arbitrator decides to remove the provision following submissions in interest arbitration.

23. As a consequence, even though the BCFMWU is permitted a statutory right to strike, under the *Code*, because of the result of a round of bargaining over 15 years ago, prior to the Supreme Court of Canada's recognition of the importance of the right to strike to the fundamental freedom of association, the BCFMWU has been unable to exercise this right through several rounds of collective bargaining.

24. In its 2015 decision, *Saskatchewan Federation of Labour*, the Supreme Court of Canada held that the right to strike was protected activity included in the freedom of association guaranteed under section 2(d) of the *Charter* (S*askatchewan Federation of Labour,* [2015] 1 S.C.R. 245, 2015 SCC 4)

25. The ability to engage in the collective withdrawal of services was found by the Supreme Court of Canada to be historically the "'irreducible minimum' of the freedom to associate in Canadian labour relations." (*SFL*, para 61, citing Paul Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (1980), at p. 69).

26. The importance of the right to strike to free collective bargaining and the fundamental freedom of association guaranteed by the *Charter* cannot be understated. In *SFL*, the Court emphasized that the right to strike:

(a) permits employees to collectively engage in negotiations with an employer on more equal footing (para 57);

(b) promotes the important *Charter* values of "human dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy" (para 53); and

(c) allows workers, through collective action, to refuse to work under imposed terms and conditions," as an "affirmation of the dignity and autonomy of employees in their working lives"(para 54).

27. The Court drew attention to the stark contrast between collective job action and alternative dispute resolution mechanisms, such as the interest arbitration to which the BCFMWU is restricted in the event of an impasse in bargaining.

28. While the right to strike is consistent with the freedom of associational, *collective* action, interest arbitration is generally much less so:

> [59] As Dickson C.J. observed, "[t]he very nature of a strike, and its raison d'être, is to influence an employer by joint action which would be ineffective if it were carried out by an individual" (*Alberta Reference*, at p. 371).
>
> [60] Alternative dispute resolution mechanisms, on the other hand, are generally not associational in nature and may, in fact, reduce the effectiveness of collective bargaining processes over time: Bernard Adell, Michel Grant and Allen Ponak, *Strikes in Essential Services* (2001), at p. 8.

> Such mechanisms can help avoid the negative consequences of strike action in the event of a bargaining impasse, but as Dickson C.J. noted in *RWDSU v. Saskatchewan*, [1987] 1 S.C.R. 460, they do not, in the same way, help to realize what is protected by the values and objectives underlying freedom of association:
>
> . . . as I indicated in the *Alberta Labour Reference*, the right to bargain collectively and therefore the right to strike involve more than purely economic interests of workers . . . . [A]s yet, it would appear that Canadian legislatures have not discovered an alternative mode of industrial dispute resolution which is as sensitive to the associational interests of employees as the traditional strike/lock-out mechanism . . . . [pp. 476-77]

29. A statutory right to strike in the *Labour Relations Code* would be consistent with the decision of the Supreme Court of Canada in *SFL* and reflective of the importance of this right to the fundamental freedom of association and free collective bargaining upon which the statutory labour relations model in B.C. has always been based.

30. For decades, there have been certain kinds of collective agreement provisions that are required to be included in any collective agreement by the *Code* or deemed to be included. Section 84 requires every collective agreement to contain both a provision prohibiting dismissal or discipline without just and reasonable cause and a "provision for final and conclusive settlement without stoppage of work".

31. The requirement of a just and reasonable cause provision is intended to protect job security, recognizing this important purpose and objective of unionization. Implicitly, this provision recognizes that unions, as democratic institutions, may for a variety of reasons or based on the elected bargaining committee at the time, agree to give up fundamental rights, such as the protection from termination without just and reasonable cause.

32. Similarly, we submit that the *Code* ought to *prohibit* the inclusion in collective agreements provisions which would restrict or eliminate the right to strike to the extent that right is permitted under the *Code*.

33. This could be accomplished by way of amendment to section 84 of the Code, to add subsections (4) and (5), as follows:

> **Dismissal or arbitration provision and right to strike**
>
> * * *
>
> (4) No collective agreement may contain a provision restricting or eliminating the right of a union or employees to strike to the extent such a strike is permitted under the Code.
>
> (5) Any collective agreement that contains a provision referred to in subsection (4) must be deemed to protect and permit all strike activity permitted by the Code and is void or partially void to the extent that the provision violates subsection (4).

34. Of course, any concerns about interruptions to ferry services caused by BCFMWU job action could be addressed through the essential services designation process set out in Part 6 of the *Code*.

35. Furthermore, the above proposal would not in any way restrict the ability of parties to reach an agreement during bargaining, upon reaching an impasse, or following a lockout or strike action to enter into interest arbitration *during that round of bargaining.* Such an agreement would not be a collective agreement term and would be limited to that round of bargaining, so would avoid the problem of restricting or prohibiting job action in future rounds of bargaining.

CONCLUSION

36. The expensive and lengthy nature of arbitrations in B.C. today is inconsistent with the efficient process envisioned by the Legislature when this model of labour relations was adopted in B.C. almost 50 years ago. These problems are continuing to worsen and are frustrating to not only the BCFMWU's members but for unionized workers across B.C. In many cases, justice delayed is justice denied.

37. In our submission, the amendments proposed above to allow more options for expedited and efficient arbitration would be a significant legislative step towards addressing these significant and pervasive issues of delay and expense in resolving workplace disputes.

38. Similarly, the right to strike is one of the most important rights of workers in Canada and a key element of the labour relations model adopted by the B.C. Legislature. Given the nature of ever-changing internal Union representation, it is inconsistent with that foundational principle to allow parties to bind themselves in perpetuity to an alternative dispute resolution which denies members the right to collectively exercise the right to strike.

39. In our submission, the *Code* amendments we have proposed to prohibit restrictions on the ability to strike in a collective agreement are necessary to reflect both the right to strike under Part 5 of the *Code* and as an essential component of the freedom of association guaranteed by the *Charter*.

Sincerely,

BC FERRY & MARINE WORKERS' UNION

Eric McNeely
Provincial President

BCTF Kids Matter Teachers Care

By email: LRCReview@gov.bc.ca

March 22, 2024

Labour Relations Code Review Panel

Panel Members:
Lindsie Thomson
Michael Fleming
Sandra Banister, K.C.

Dear Panel Members:

Subject: B.C. *Labour Relations Code* Review

We are writing in response to your invitation for submissions from stakeholders regarding your review of the *Labour Relations Code* (the "Code").

The British Columbia Teachers' Federation (BCTF) represents over 50,000 public school teachers and associated professionals in the province.

Our submissions focus on issues relating to equity and inclusion, particularly with respect to Indigenous workers, as well as the need to protect and enhance collective bargaining rights in response to rapid changes in the nature of work.

Recognition of Indigenous rights

Currently the BC *Labour Relations Code* contains no reference to Indigenous rights. The Code provides no framework for consideration of the unique labour relation needs and issues that arise in relation to Indigenous workers and Indigenous employers. The Code is not unique in this regard. We have been unable to identify any labour relations legislation in any Canadian jurisdiction that expressly addresses Indigenous rights aside from a few employment standards clauses recognizing National Indigenous Peoples Day and National Day for Truth and Reconciliation.

While a full review of alignment with the United Nations Declaration on the Rights of Indigenous People (UNDRIP) may be beyond the scope of what this process can accomplish and may warrant an additional review dedicated to just that issue, we encourage the panel to recommend changes to the Code which establish a basic framework for recognition of Indigenous rights within BC labour relations. This framework would provide a foundation for a full alignment with UNDRIP and for equity and inclusion of Indigenous people within the labour relations community.

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- **Addition of general statement of principle**

Section 8.1 of the *Interpretation Act* requires that all statutes be interpreted in a manner that aligns with UNDRIP and Aboriginal Rights.[1] Express reference to this in the Code would draw more attention to this obligation and increase the likeliness of it being reflected in Board and arbitral decisions. Adding the following as a new subparagraph to section 2 would ensure that the requirement for alignment with UNDRIP guides the exercise of powers and the performance of duties under the Code:

> *2 (i) is consistent with the Declaration on the Rights of Indigenous Peoples and upholds and does not abrogate or derogate from the Aboriginal and treaty rights of Indigenous peoples as recognized and affirmed by section 35 of the Constitution Act, 1982.*

- **Jurisdiction**

Jurisdictional issues are a major barrier to organizing Indigenous workers and Indigenous owned workplaces. An expedited process for determining whether the Board will accept jurisdiction would help address this. The following could be added to section 18 of the Code (Acquisition of Bargaining Rights):

> *18 (5) Where an issue arises with respect to whether an enterprise is under Provincial or Federal jurisdiction, the Board will resolve the issue on an expedited basis.*

- **Good faith bargaining**

The requirement to bargain in good faith should be amended to include an express requirement to share information on any commitments made to First Nations in the sector that may be relevant to bargaining, including Impact Benefit Agreements. The Code should also require bargaining with respect to alignment of the collective agreement with Indigenous rights. This could be added into section 11 or section 47 with wording such as the following:

> *47.1 (1) The parties will make every reasonable effort to bargain terms consistent with the Declaration on the Rights of Indigenous Peoples and terms which uphold and do not abrogate or derogate from the Aboriginal and treaty rights of Indigenous peoples as recognized and affirmed by section 35 of the Constitution Act, 1982.*
>
> *(2) The employer will provide the union with copies of any agreements made with First Nations or Indigenous organizations which may be relevant to bargaining.*

[1] *INTERPRETATION ACT*, RSBC 1996, c 238, s 8.1

- **Internal union affairs**

The BCTF has recognized a need to make changes to our internal structures and practices to ensure fair representation of Indigenous members and recognition of Indigenous rights within the union. The BCTF's priorities for the 2023-2024 school year include:

- Creating space for truth and reconciliation as key to our commitment to anti-racism within the public education system and Federation structures.

- Creating an equitable and inclusive union in which the structures, processes, and culture ensure that all members can count on access, agency, and a sense of belonging.

We recommend changes to the Code to remove any potential barriers to unions advancing priorities of this nature. A provision could be added to section 10 to recognize that it is not discriminatory to provide for affinity representation or reserve positions on governing bodies for members who are Indigenous. For example:

> *10(4) It is not a breach of this section for a trade union to implement an equity program or provide for affinity-based representation for Indigenous members or individuals and groups who are disadvantaged for reasons recognized by the BC Human Rights Code.*

- **Procedural provisions.**

There are many areas of the Code where procedural provisions could be amended to recognize Indigenous rights.

Section 83 could be amended to require the Collective Agreement Arbitration Bureau to include Indigenous arbitrators on its register of arbitrators. Currently we are not aware of any labour arbitrators on the register who identify as Indigenous. Suggested wording:

> *83 (5) The register of arbitrators will include arbitrators who are Indigenous.*

Sections 89 and 92 could be amended to give an arbitration board the power to incorporate Indigenous protocols into procedures and to consider Indigenous rights, Indigenous law and UNDRIP. Suggested wording:

> 89(i) *consider the Declaration on the Rights of Indigenous Peoples and the Aboriginal and treaty rights of Indigenous peoples in facilitating a settlement or reaching a determination.*

> 92(1) (f) *consider Indigenous protocols and dispute resolution approaches in determining procedure.*

These suggested changes are all aimed at creating a very basic foundation for the recognition of Indigenous people and Indigenous rights in BC Labour Relations.

Changing nature of work

Changes that were initially pandemic driven have reshaped the workplace in ways that were beyond anything that was contemplated when the Code was last reviewed in 2018. This means that many of the assumptions about workers and workplaces that shaped the Code are not reflective of the current nature of work. Amendments in the following areas are needed to ensure that the Code is responsive to current realities and that the most vulnerable and precariously employed workers have the right to bargain collectively.

- Employees who are not directly employed by a large stable employer need the ability to bargain on a broader or sectoral basis.

- Online platform workers need to be expressly recognized as employees under the Code. The growing prevalence of online platform work warrants amendments to the Code to ensure that these workers have full and fair access to collective bargaining.

- Union organizers need enhanced access to employee contact information as remote work makes it more difficult to identify and communicate with workers.

- Workers need an expansion of successorship protection. In the current economy, workers need the stability of established collectively bargaining rights and protection from the impact of contract flipping and changes in business structures or ownership.

- Newly certified workers need to be protected until their first collective agreement is in place rather than just for a limited freeze period.

In addition to these areas, technological change, particularly in the areas of automation and Generative Artificial Intelligence, poses a significant risk to the stability of employment and labour relations and warrants changes to the Code. As we enter into a period of intensification of technological change, adjustment plans are very important. Section 54 should be strengthened by requiring negotiated adjustment plans with a more robust dispute resolution process, including an arbitrated outcome, where agreement is not reached.

Picketing

Current rules on picketing do not expressly account for remote work. Amendments are needed to ensure a common understanding that picketing in relation to remote work is permitted under the Code and protected under section 66 (protection from liability). This includes establishment of pickets in relation to both remote and non-remote work as well as the recognition of those pickets by both remote and non-remote workers.

As provincially regulated workers, we also need to be able to honour Federally regulated picket lines. Any gap in the Code regarding this needs to be addressed to ensure that all legal picket lines can be honoured.

Resources for Labour Relations Board

We recommend a substantial increase to the operating and capital funds of the Labour Relations Board. Funding should provide for sufficient staffing to meet the requirement under 2(e) for those exercising powers under the Code to promote the expeditious settlement of disputes.

During the COVID-19 pandemic, the Board played a pivotal role in facilitating cooperative resolution of issues, particularly in our sector, and in the maintenance of confidence in public institutions during very challenging times. Adequate funding is needed to ensure that the Board is able to support the labour relations community and protect the public interest in the face of current and emerging challenges.

Thank you for considering these submissions.

Yours truly,

Clint Johnston
President

9685130
CJ:sa:tfeu

March 21, 2024

GENERAL INTRODUCTION

1. The BCGEU ("Union") is pleased to participate in the present review of the BC *Labour Relations Code* (the "Code"). The Union believes that periodic reviews of the Code are an important method to communicate with the labour relations community and we thank the panel for its consideration of the Union's submission.

2. While this submission addresses the specific issue of picketing, the Union wishes to provide a general statement of support for the submissions advanced by the BC Federation of Labour. The Union was consulted on the drafting of that submission, has reviewed it and supports those submissions in their entirety.

3. While the Union considers all the proposals in the Federation's submission are pressing labour relations matters, the Union has a particular concern and interest in an effort to study and advance a sectoral bargaining initiative. The Union believes that sectoral bargaining needs to be fully explored because it effectively facilitates the twin policy goals of access to collective bargaining and industrial stability. While sectoral bargaining has been imposed in certain sectors of BC's economy—such as construction and health care—the model has generally been limited to employees in higher paid, stable employment. It is the Union's view that the advantages gained by sectoral bargaining should be widely available throughout the economy, especially sectors dominated by marginalized members of the labour market. Accordingly, we strongly urge the panel to adopt in full the Federation's recommendations on sectoral bargaining.

4. We now turn to the Union's submission on Section 65 of the Code.

PROPOSAL ON PICKETING RESTRICTIONS

5. This submission is meant to address the anomalous and contradictory treatment of an employer's ability to sustain or expand sources of income during a labour dispute. Generally, the structure of the Code seeks to confine the economic impact to the precise location of work performed by the employees involved in the labour dispute. Where the employer replaces its income streams from assistance by third parties, the Code allows those parties to be drawn into the labour dispute. Equally, where an employer moves work that would have been performed at its picketed operations, "but for" the strike, the Code permits a corresponding expansion of picketing.

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6. This is a principle we will describe as “economic symmetry” because the Code seeks to expand the scope of picketing in the same amount and degree of the employer’s alternative revenue streams. Thus, it provides a symmetrical expansion of the labour dispute to the employer’s ability to gain an unfair advantage in the labour dispute.

7. Chair Kinzie in *Slade & Stewart Ltd.,* LRB No. 317/84, noted the underlying purpose of the picketing provision was to reduce the economic advantages gained by the employer’s ability to continue with its operations:

> It can be seen from this definition that the purpose of picketing is to persuade or attempt to persuade third parties not to deal with the employer. This activity in turn has the objective of reducing the flow of revenues to the employer during the dispute. More specifically, the purpose of picketing is to persuade or attempt to persuade a third party not to enter a place where the employer carries on business, operations, or employment, not to deal in or handle the employer's products, or not to do business with the employer.
> (Emphasis added.)

8. Therefore, the general structure of the Code is to expand picketing in response to an employer’s expansion or redirection of its commercial activities. This approach directly aligns with the principle of economic symmetry.

9. Problematically, where an employer can passively replace its income stream from another of its operations unaffected by the labour dispute, the Code does not provide a method by which that secondary operation can be drawn into the labour dispute. In our view, the inability to picket another operation reasonably likely to assist the employer during a strike or lockout is anathema to the principle of economic symmetry.

10. Accordingly, we propose changes to the Code which would allow secondary picketing in the following circumstances:

a. Where an employer has one of its locations affected by a strike or lockout;

b. Where the same employer has other locations that:
    i. provide the same or similar product or services;

c. Where the same employer has other locations that:
    i. provide the same or similar product or services;
    ii. there are contextual factors, such as geography, which in the Board’s opinion, would reasonably draw the same customers to the other location;

11. It is our view that the assessment ought to be on an “objective” and “reasonableness” standard rather than requiring a union to show an actual transfer of business. The latter would result in a substantial degree of delay if disputed. Furthermore, the litigation would place the Union at a distinct disadvantage for the obvious fact that most of the relevant documents and information would be in the possession of the employer.

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Application of Current Provision

12. Currently, the Code limits picketing to the site of the struck employer where actual work was performed by the employees involved in the labour dispute. The Code allows an expansion of picketing consistent with the economic symmetry principle. For example, picketing will be expanded to an "ally" if the Union can prove that a third party is providing economic support to the employer involved in a labour dispute.

13. Additionally, in limited circumstances the Board will allow the expansion of picketing to other operations of the employer involved in the labour dispute. Normally, the Code strictly limits picketing to the site or place of work of the employees involved in the labour dispute. If an employer has divisions or operations that are separate and distinct, those components of the business are treated as separate employers. Therefore, picketing would also be strictly prohibited at other operations of the employer:

> (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.

14. The Code does permit the expansion of picketing to other locations of the same employer if work is moved to the new location from operations which are subject to picketing. This is set out at Section 56(4)(a):

> 65(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)…

15. This language has expressly been interpreted "narrowly" by the Board since it was first interpreted in 1984. The Reconsideration Panel in *Slade & Stewart Ltd.,* LRB No. 317/84, noted the following changes from the previous legislation:

> That the focus for permissible picketing has been changed from the employer and his business to the employees and their work is reinforced by the provisions of Section 85(4) of the Labour Code. In general terms, Section 85(4) provides that if the work of the striking or locked-out employees is shifted to another location of the employer or to a third party employer, the Board may permit picketing at those employer locations to which the work has been shifted or the place of business, operations or employment of the third party employer or ally.

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16. The Board in *MacMillan Bloedel Limited, Alberni Pulp and Paper Division*, BCLRB No. 212/86 stated that Section 65(4) was meant to protect against an employer utilizing another one of its operations to carry on with work otherwise impeded by a labour dispute. Disappointingly, in the Board's view, the section was only meant to capture an *active* movement of work from its picketed location to another one of its operations:

> The purpose of Section 85(4) [now Section 65(4)] is to deal with the situation where the struck employer seeks to avoid the effects of the trade union's lawful strike and picketing by continuing [its] struck operations at another location, or through a third party ally. If the struck employer engages in such conduct, the Board may permit the trade union to picket the other location of the employer where the struck operations are being continued, or the places of business, operations or employment of the third party employer who is assisting the struck employer in carrying on [its] struck operations. (page 9)

17. Thus, where an Employer actively takes steps to move work from behind the picket line to another location, its actions will be captured by Section 65(4). However, the Board's approach has never captured the *passive* movement of work by virtue of the employer's business and operations.

18. The impact on the labour dispute is the same whether the movement of work from behind the picket line is active or passive. The Employer gains the same economic advantage in either example.

19. It is the Union's view that the continued distinction between passive and active movement of work impairs the underlying coherence of the Code and undermines the goals behind the economic symmetry principle. Furthermore, it is important to note that businesses have changed since 1984. Today there is more consolidation of enterprises into larger companies with multiple locations often providing the same or invariant products and services. This change in the economy has not only increased the economic power of employers generally, but these same employers are able to exploit this incoherence in the Code to its advantage during a labour dispute.

20. Accordingly, it is the union's strong view that the present architecture of the Code is not justifiable in light of the underlying goal of economic symmetry.

PROPOSED CHANGES MORE CLOSELY ALIGNED WITH *CHARTER*

21. As noted above, the Code places severe restraints on secondary picketing. In fact, the Code contains some of the most restrictive picketing measures in the country. The regulation of picketing in the Code retains the concept of primary and secondary picketing and has been done so since the early 1970s. It is the Union's view that the application of the present section would not survive *Charter* scrutiny where, in specific instances, the facts do not accord with the principle of economic symmetry.

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Section 2(b) of the *Charter*

22. BC's legislative approach to picketing precedes the Supreme Court of Canada's decision in *R.W.D.S.U., Local 558 v. Pepsi-Cola-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156 ("Pepsi-Cola"). In that decision the Court noted that some legislatures regulated picketing geographically, which was similar to the common law distinction between primary and secondary picketing:

> 29 A distinction is sometimes made between primary and secondary picketing. Primary picketing typically refers to picketing at the premises of the employer; secondary picketing is picketing at other premises. No provincial legislature has expressly defined "secondary picketing". However, in carving out the core of permissible picketing, legislatures sometimes resort to location as a marker.

23. In *Pepsi-Cola*, the SCC held that the common law restrictions on secondary picketing were not logically sustainable and infringed the *Charter* protected right of freedom of expression captured by s. 2(b).

24. The Court emphasized importance of free expression in the labour context, thus capturing the significance of secondary picketing to collective action:

> 32 Picketing, however defined, always involves expressive action. As such, it engages one of the highest constitutional values: freedom of expression, enshrined in s. 2(b) of the Charter.
>
> […]
>
> 33 Free expression is particularly critical in the labour context. As Cory J. observed for the Court in *U.F.C.W., Local 1518 v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, "[f]or employees, freedom of expression becomes not only an important but an essential component of labour relations" (para. 25). The values associated with free expression relate directly to one's work. A person's employment, and the conditions of their workplace, inform one's identity, emotional health, and sense of self-worth: *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313; *KMart*, *supra*.

25. The Supreme Court, in *Pepsi-Cola*, noted the balancing of interests between restrictions on picketing and economic interests. Given the importance of picketing to the expressive activity of employees, economic interests had to yield to the *Charter* protected freedom:

> 72 Protection from economic harm is an important value capable of justifying limitations on freedom of expression. Yet to accord this value absolute or pre-eminent importance over all other values, including free expression, is to err.

26 Therefore, legislatures need to adequately balance economic interests against picketing as *Charter* protected expressive activity. Indeed, the Supreme Court has noted the importance has noted the importance of expressive activity in redressing economic imbalances inherent in the relationship between

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the employees and their employer in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, [2013] 3 S.C.R. 733, at paras. 31-32:

> A person's employment and the conditions of their workplace can inform their identity, emotional health, and sense of self-worth . . .
>
> Free expression in the labour context can also play a significant role in redressing or alleviating the presumptive imbalance between the employer's economic power and the relative vulnerability of the individual worker . . . . It is through their expressive activities that unions are able to articulate and promote their common interests, and, in the event of a labour dispute, to attempt to persuade the employer. [Citations omitted.]

26. It is our view that the nuanced application of the present language does not strike the appropriate balance between economic interests and expressive activity where an employer, by virtue of its integrated operations, can gain material advantage against the union in a labour dispute. Furthermore, and as discussed immediately below, it is our view that Section 2(d) of the *Charter* is further engaged.

Section 2(d) of the *Charter*

27. Section 2(d) of the *Charter* guarantees the freedom of association, including the right of employees to engage in a meaningful process of collective bargaining": *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 ("*SFL*") at para. 1. That right "includes employees' rights to join together to pursue workplace goals, to make collective representations to the employer, and to have those representations considered in good faith, including having a means of recourse should the employer not bargain in good faith", and sufficient employee "independence and choice to determine and pursue their collective interests": SFL at para. 1.

28. Section 2(d) right to meaningful collective bargaining does not guarantee any "outcome or access to a particular model of labour relations": *Mounted Police Association of Ontario v. Canada*, 2015 SCC 1 ("*MPAO*") at para. 67. Section 2(d) right to meaningful collective bargaining does, however, guarantee a meaningful process for collective bargaining: *MPAO* at para. 67. The government "cannot enact laws or impose a labour relations process that substantially interferes with that right": *MPAO* at para. 81.

29. The test for finding a violation of Section 2(d) is "substantial interference". Section 2(d) "prevents the state from substantially interfering with the ability of workers, acting collectively through their union, to exert meaningful influence over their working conditions through a process of collective bargaining": *SFL* at para. 77. The Supreme Court of Canada has recognized that while there are many ways in which collective bargaining processes may not be constitutionally valid, the question that must be asked to determine whether the collective bargaining process available to employees violates Section 2(d) is whether that process disrupts the balance between employers and employees that Section 2(d) seeks to achieve:

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> [72] The balance necessary to ensure the meaningful pursuit of workplace goals can be disrupted in many ways. Laws and regulations may restrict the subjects that can be discussed, or impose arbitrary outcomes. They may ban recourse to collective action by employees without adequate countervailing protections, thus undermining their bargaining power… Whatever the nature of the restriction, the ultimate question to be determined is whether the measures disrupt the balance between employees and employer that s. 2(d) seeks to achieve, so as to substantially interfere with meaningful collective bargaining…
> *MPAO* at para. 72

30. When considering whether the bargaining format available to workers violates Section 2(d), the focus is on whether the process is meaningful or whether it instead substantially interferes with the ability of workers to exert influence over their working conditions through collective bargaining. To constitute meaningful as opposed to substantial interference, the process must ensure that the imbalance in the employee – employer relationship which collective bargaining is intended to correct is not impaired.

31. While a system which preserves the economic symmetry between employees and employers during a labour dispute will likely constitute one that promotes meaningful collective bargaining. A system which lacks economic symmetry and further deprives the employes of free expressive activity is, in our view, inconsistent with the *Charter* protections afforded under Sections 2(b) and (d).

The View of Previous Code Review Panels

32. Both the 1992 and 2018 Labour Code Review Panels considered the issue of whether amendment to the Code should be made to allow secondary picketing.

33. In the 1992 Labour Code Review Report, the justification for restricting non-struck employer site picketing shifted from the need to protect the economic interests of employers involved in strike action to limiting the impact on third parties. The panel's reasoning wholly aligned with the common law approach to secondary picketing that was overturned in *Pepsi-Cola*:

> Picketing must be restricted to limit the economic impact on the province and to protect the legitimate rights of third parties. Accordingly, several changes are recommended to the picketing provisions to restrict picketing to the principal site of the struck employer and to clearly restrict picketing and the effects of picketing on others.
> 1992 Labour Code Review Report, p. 122

34. Therefore, the 1992 Report concluded as follows:

> We agree that the site of picketing should, as a general rule, be where an employee works. We agree therefore that picketing at secondary locations of employers should be enjoined in most cases.

35. We note that the comments of the 1992 panel preceded the Supreme Court's decisions in both *Pepsi-Cola* and *Health Services.* We further note that by choosing the words "in most cases", the picketing restriction was not meant to be absolute.

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36. The 2018 panel also considered submissions by unions to eliminate or reduce restrictions on secondary picketing. However, the panel held that the 1992 panel struck a balance when considering that restrictions were placed on both secondary picketing and the use of 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 1990's. 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.
>
> *2018 Labour Relation Code Review Panel Report, page 26*

37. The union is resurrecting this issue, though it is urging a more nuanced approach. Despite the conclusions of the 2018 panel, we are suggesting that a more granular look at the actual real-life application of the provision. In particular, the Code should address scenarios which do not correspond to the principle of economic symmetry.

Proposed Amendments

38. The 1992 and 2018 *Code* review panels both noted a general balance between replacement worker restrictions and secondary picketing, presumably concluding that such restrictions provided a rough "economic symmetry" between unions and employers.

39. However, neither of the panels specifically considered the operation of the Code's picketing provisions when applied to employers, with multiple operations, providing an invariant product or service. In such a case, the invariant nature of their product or service, together with the expansive nature of the business operations, will provide a safe and reliable.

40. Alternative to their normal customer base. Where the employer's other locations are sufficiently convenient, the customer can readily shift its business from the picketing location to one or more of the employer's other operations. In such a case, the income derived from the secondary location could almost entirely blunt the negative economic impact of the actual labour dispute.

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41. Where an employer actively moves work from behind a picket line to another location, unions are able to expand their picketing activities. Equally, where the employer derives advantage from a third party, those third parties are allies and, in the normal course, the Board will open their operations to "secondary picketing". However, the union has no similar mechanism if the secondary location is owned and operated by the employer and customers shift their business to that location because it provides the same good or service as the picketed location. Accordingly, the "economic symmetry" which the Code purportedly provides is disrupted and the employer gains an unfair advantage.

42. Whether the employer is gaining an economic advantage throughout the duration of a strike from a third party or a secondary location, the mischief to the Code is the same. Accordingly, the Code should be corrected to provide the same remedy in instances where employers gain an economic advantage due to the passive movement of customers to one or more of its other locations.

43. Therefore, the suggested changes to the section are set out in underline below:

> 65 (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),
>
> <u>(b) 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 that are substantially similar to the "work" noted at subsection 3 and, in all the circumstances, would provide a reasonable substitute for the public, or</u>
>
> (c) 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,

44. All of which is respectfully submitted.

Stephanie Smith
President

SN/SS
MoveUP

The Canadian Animation Guild

IATSE Local 938

Via Email

March 22, 2024

Email:
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Ministry of Labour

LRCReview@gov.bc.ca

Dear Sirs/Mesdames:

On behalf of the Canadian Animation Guild, IATSE Local 938, we would like to offer the following submission to the Labour Relations Code Review Panel in regards to recommendations on amendments to the Code that should be made to improve successor rights and to anticipate and curb the potential harms of artificial intelligence technologies. We also would like to submit supporting documentation of the anticipated impact of artificial intelligence on the animation and entertainment industries for the Panel's consideration while conducting its review of the BC Labour Relations Code.

The Canadian Animation Guild is a quickly growing union representing animation and video game workers in BC. Currently we represent 420+ active union members and 600+ workers that are in the process of bargaining their first collective agreements. Additionally, IATSE organisers are collaborating with workers in animation, video games and visual effects studios across the province who are seeking union representation. The Vancouver Economic Commission reported that

Animation and VFX industries represented an approximate $1.4B annual spend in 2022, representing just under 30% of the total motion picture industry spend in Vancouver and BC.[1] While we are a large industry, we are tight knit, and our Local's membership is growing quickly. Our Local's submissions on this topic are thereby representative of not only the sentiments of the members of our Local as well as the concerns of the broader BC entertainment industry workers that are seeking representation with us or alongside us.

1. Successor Rights

The following submission was developed with guidance from our International Representatives at the IATSE Canadian office, and is informed by their years of experience working with entertainment workers here in BC. It reflects concerns shared by our union members as well as union workers across film and television and other entertainment industries.

We would like to see the current BC Labour Relations Code expanded to ensure that it protects animation, games and entertainment workers from contract flipping. Currently, standard industry practices are such that each individual animation or film production is organized as a separate corporate entity, and those corporate entities are all overseen by a common employer when they are produced out of the same workplace or studio. Workers and employers both consider that studio to be the employer, rather than the corporate entity of the production, and it creates a generally harmonious relationship between the workers, the employers and our relatively new Local. It allows for extended health benefits and probation periods to bridge contracts and creates much needed stability for the vast majority of workers, who do not enjoy the security of being permanent employees. It also allows workers to form a union with wall to wall units in a studio, providing them with more safety

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[1] Vancouver Economic Commission. "Film Industry in BC Annual Spend | Vancouver Economic Commission," October 12, 2023. https://vancouvereconomic.com/research/film-industry-in-bc-annual-spend/.

and protection. However, this current industry practice is not fully guaranteed under the Code.

Subject to interpretation, the current BC Labour Code could enable an employer to insist that each corporate entity they administrate is in fact a separate workplace. This would greatly hamper security for workers by requiring them to repeat probation periods for the same employer, interrupt their extended health benefits, and severely limit their ability to form a union and fairly bargain a collective agreement.

Our sister IATSE Animation Local 839, which is based in California, has for many years been tasked with organizing and representing workers in a jurisdiction that does not have strong enough protections against contract flipping in entertainment. Animation unions in California, when they are organized amongst non-permanent employees, must certify productions one by one– even when they exist under the same studio's roof. This environment can create an increased amount of precarity for already vulnerable contract workers, and can result in contract negotiations and labour relations issues not being resolved until well after the production ends and the company ceases to exist. The majority of Canadian animation and entertainment workers are employed in similar temporary contracts, so it's not impossible that they could face the same precarious situation if an employer chose to treat each production corporation as a separate workplace.

Thankfully, we believe that strengthened successorship language in the BC Labour Relations Code would be welcomed by both workers and employers alongside our Local. Our Local has successfully filed three union certifications to date at Titmouse Canada Animation Inc, WildBrain and Kickstart Entertainment. Alongside us, the newly formed IATSE visual effects Local 402 has successfully certified Double Negative (DNEG). In all of these cases, the employer did not object to the bargaining units being defined as all workers at or from the studio address, even if there were other bargaining unit issues or exclusions raised before the BC Labour Relations Board. These actions tell us that it creates better labour stability for employers to treat each disparate corporation under their administration as one workplace in the eyes of the Labour Relations Board. It follows good sense to update the BC Labour

Relations Code to reflect this widespread practice in the animation and entertainment industries.

Section 35 of the Code should be amended to prevent the exploitation of workers' rights through contract flipping. The Canadian Animation Guild recommends that the Panel should expand successorship rights to apply to contract re-tendering. This protection should be extended to all workers in order to mitigate the harms of contract flipping that the panel has identified in the past.

The previous Labour Code Review Panel, formed in 2018, used strong language to describe the disturbing consequences of this gap in the current legislative framework. The Panel's observations included:

> "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."
>
> "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 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."

Previously however, the Panel chose to cater to employers' requests for a more piecemeal approach to protections in terms of successorship and contract flipping and has limited the scope of what types of work are protected from this practice. The current scope of contract flipping protections is arbitrary and unreasoned. As stated above, contract re-tendering has resulted in employment precarity. It is risky for all workers, regardless of what services they provide, to seek union certification and bargain a collective agreement. The current Labour Relations Code excludes many workers who are affected by the harms the Panel outlined and they deserve the same protection, regardless of their industry.

2. Artificial Intelligence

The technical field of artificial intelligence is quickly evolving, and as time passes the list of proposed use cases in workplaces is rapidly growing longer. As the domain of this technology's use expands, so does its potential for harm. Without human-centered regulations in place to curb its dangers, AI threatens workers by infringing on their privacy, exposes them to discrimination through biased data, creates a loss of work and deskilling through a system far more complex than regular automation, and exposes workers to legal liability that was previously beyond the scope of their duties. The documents provided in Section 3 of this submission discuss these threats to workers in detail and our submission shall focus on our recommendations for essential amendments to the BC Labour Relations Code that will curb the capacity of this technology to harm workers. The BC Labour Relations Code Review Panel is uniquely positioned to be able to shape the legislation of our province in order to ensure that workers are protected from the unregulated use of AI technologies. Proactively amending the Code to avoid widespread harm is the duty of the Panel, and our hope is to provide help in doing so.

Throughout this submission we will be referring to a number of distinct emerging technologies as “Artificial Intelligence” or “AI” for the sake of convenience and brevity. We would like to communicate to the Panel that by doing so we are referring to technologies, theories and development that pursue a goal of simulating human intelligence, including but not limited to: information processing, autonomous reasoning, decision making and output generation. AI technologies are available to use for a number of applications including, but not limited to: predicting human behaviours, disseminating information, providing qualitative analysis on data, and performing human tasks autonomously (Such as driving or customer service tasks). When necessary, we will make mention of specifically “Generative AI'' or “GAI” which refers to a subset of artificial intelligence technologies that center on the generation of content including, but not limited to: text, video, audio, three-dimensional models, visual effects, code, and images. Language in the AI space evolves quickly to describe different and nuanced aspects of the emerging technologies it is attempting to describe, so we ask that the Panel consider the impacts, uses and outputs relevant to the terms that we have described above, even if naming conventions shift.

In order to best anticipate the multifaceted issues that AI creates, we suggest that one of the first amendments made to the Labour Relations Code be that any employer that wishes to introduce AI to their unionized workplace has a duty to enter into consultation with a union and reach an agreement on the use of AI in the workplace. The exponential growth of AI applications in the last two years has created a situation where volatile technology is being introduced to workplaces under collective agreements that could not reasonably have anticipated its impacts within the scope of their technological change language. Even if a new collective agreement is struck today, its bargaining committee cannot predict how this technology will evolve and what protections are needed for workers in response. Requiring employers to consult with a union puts agency into the hands of workers. In the case of the animation and entertainment workers that we represent, it would allow those workers to safeguard their work from being used to train AI models, ensure that they are not held liable for copyright infringement created by generative AI tools and allow them to ensure that existing language around technological change and screen credits is respected. These concerns are just a few held by animation industry professionals and they are most relevant to our industrial niche.

However, it is certain that other industries will have their own concerns that can be best addressed in a quickly evolving context by ensuring that they are given an opportunity to bargain with the employer before AI is introduced into their workplace.

Further to the issue of AI being a rapidly evolving technology with myriad uses, we recommend that the Panel amend the Code to require that Employers conduct impact assessments on unionized workers and workplaces before they are able to introduce AI technologies. The assessments should be shared with the union and the workers, and their findings should be taken into consideration when the employer and the union are consulting on introducing AI into the workplace. Because AI technologies are still emergent, there is very little reliable, accessible and nuanced data on how it will impact workers. Data is needed on what impacts AI will have on the availability of work, the impact it will have on the quality of products, the impact it will have on worker safety and the impact it will have on worker privacy. The breadth of diversity in AI technology means that blanket approaches to workplace AI policy may not allow for nuanced evaluation of AI tools. An employer may be interested in introducing a tool to the workplace that is purely assistive, and has proper guardrails that protect worker privacy and does not threaten their job security. A properly conducted impact assessment can demonstrate these facts to workers, and allow for the employer, the workers and the union to move forward with confidence. Similarly, an impact assessment will allow all parties to recognize technology that will be harmful to their workplace and properly respond to such a threat. Ensuing that assessments are conducted will allow employers and workers to make informed decisions on what technologies to embrace, and which to avoid.

Our Local feels that it is also important that the Panel make recommendations that the BC Labour Relations Code shall require that Employers using AI in their unionized workplace must put into place plain language policies that explain to workers the full extent of what the AI shall be used for. Further, these policies must also make clear to workers what risks the AI exposes them to, what biases or errors it is prone to, when it will be actively in use and where all training data used to create the AI is sourced from, including whether or not that employee's work or data will be used as training material. A great deal of current AI documentation is either quite

jargon heavy, exaggerated for marketing purposes, or written by developers intentionally trying to obscure the nature of their products. Even in technology heavy sectors like animation, workers have varying degrees of familiarity with the finer details of AI technology, including the possible impacts and repercussions of its use. This information is essential for a worker to understand when they are using AI tools or programs, in order to properly evaluate risk, make fair and unbiased decisions and be able to recognize and react to errors output by the AI. Employers must accept responsibility for the use of these tools, and plain language policies are a part of that responsibility.

AI systems that monitor workers, evaluate worker performance and evaluate applications for hiring or advancement at work must not be permitted under the BC Labour Relations Code. All of these applications are in highly sensitive areas, and require a human-centric and nuanced approach. AI surveillance can include tracking worker movements, keystrokes, facial expressions, content of emails, applications, device usage and more, both in a workplace and outside of it. This surveillance is often conducted with the goal of creating qualitative metrics on which to base judgements regarding which workers deserve to be hired, disciplined or promoted. This immense privacy overreach also does not properly account for cultural differences, work styles or dimensions of varying mental and physical ability in the same way that a human observer is capable of. Multiple studies have shown that AI recreates any existing cultural biases that are present in its training data when processing data or creating output.[2] These biases have been shown to in turn bias humans reviewing the AI outputs, so human oversight of AI tools is not sufficient to ensure that harmful bias is removed.[3] Allowing AI to monitor and judge workers would create negative impacts on reconciliation, equity, diversity and inclusion efforts in the workplace. A Labour Relations Code that upholds a worker's right to equality and fair treatment must not allow AI to be used to monitor or evaluate workers.

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[2] Ibm Data and Ai Team, "Shedding Light on AI Bias With Real World Examples," IBM Blog, October 16, 2023, https://www.ibm.com/blog/shedding-light-on-ai-bias-with-real-world-examples/.

[3] Glickman, Moshe, and Tali Sharot. 2022. "how Human-ai Feedback Loops Alter Human Perceptual, Emotional and Social Judgements." OSF Preprints. November 15. doi:10.31219/osf.io/c4e7r.

The issue of AI in the workplace is much more insidious than regular automation of work, and necessitates that wherever possible AI tools not be used without full and informed consent from unionized workers. While there are some applications of AI that are out of the control of most employers, such as AI integration with email and word processing programs, employers can exercise control over what specialized AI tools are introduced to their workplaces, and this is the nexus at which worker consent is key. Workers must also have a right to opt-out of interactions with AI that could lead to the automation of their work, without fear of retribution. Previous industrial automation focused on rote processes and actions. AI technologies, especially Generative AI, are an attempt to commodify human knowledge, experience and problem solving into something tangible that can be exploited for profit. The intrusion of AI technology into these domains of reasoning and tacit work creates a cycle of workers' labour being appropriated from the creation of a product to training a replacement for themselves without their consent or foreknowledge. Many, if not most, people have already been subjected to this type of extraction of reasoning data through the use of Google's reCAPTCHA bot protections on secure websites. The data produced by solving reCAPTCHA prompts, which ask individuals to prove their humanity by solving a simple visual puzzle, is collected and used by Google to train AI.[4] Most people consent to the use of reCAPTCHAs in order to access essential services securely but, unless a person does their research on reCAPTCHA and Google's AI development initiatives, they would not be reasonably aware of how translating a distorted line of text could lead to Generative AI like Google's Gemini being used to put writers out of work. If micro-interactions like filling out a reCAPTCHA can yield such robust training data for AI, then the potential repercussions of allowing an employer to train AI using the work of their employees, and allowing the passive gathering of data by AI developers through the use of their applications is enormous– and even more difficult to predict. Additionally, when so much AI training data is handled by less scrupulous companies than Google, such as Stability AI[5], the risks of data being misused grows. For our industry, our unionized

[4] "reCAPTCHA: Easy on Humans, Hard on Bots," n.d., https://www.google.com/recaptcha/intro/?hl=es/index.html.
[5] "Stability AI's Lead Threatened by Departures, Concerns Over CEO - BNN Bloomberg," BNN, August 8, 2023, https://www.bnnbloomberg.ca/stability-ai-s-lead-threatened-by-departures-concerns-over-ceo-1.1956196.

workers must be free to opt out of having our work used to train GAI and be free to opt out of using GAI for the purposes of producing creative work. An Employer that makes engaging with these tools a condition of employment, forces a unionized worker to train their own replacement, and the replacement of their fellow workers.

Further to our position, we submit that the Panel should require that AI technologies may not be used by employers to fully automate the work of their unionized employees and limit the use of this technology to tool-based, assistive applications. This precaution is essential in order to ensure that entry pathways into industries are protected and to prevent the deskilling and erosion of the robust and valuable BC animation industry. Unchecked automation with GAI in the animation industry would lead to a broad deskilling of the workforce, as the more rote, but still skilled, entry level work will be cut out first. In animation, this work can look like junior animators learning industry-standard posing and timing on simple scenes, junior designers creating additional angles of a background from a senior designer's key art, or a junior pipeline technical artist programming a script to improve an artist's workflow. All of these positions often require years of study in order to enter, and are incredible learning opportunities for each worker to build their skill repertoire, even if they aren't exciting tasks in the grand scheme of the animation industry. Losing the bottom of the production ladder in this way will lead to fewer workers being able to enter the industry, fewer workers having a fulsome grounding in our craft's core skills and fewer workers prepared to move up the ladder in order to replace more senior workers as they exit the industry. We have historically observed very high turnover and burnout rates in our industry, which has led to high numbers of workers leaving the industry entirely within 5-10 years. Deskilling from the loss of work to AI automation would undermine our industry very quickly if it is not checked. BC is a major hub of animation production in Canada, and it employs thousands of workers in reliable middle class jobs. While the median animation worker's income is only $65000/year,[6] it still represents a large part of BC's economy. Losing this work to automation will mean a significant loss to the market, as well as a loss of the skilled workers that the BC government has invested in through tax credits. To prevent this

[6] Canada, Employment and Social Development. "Animator - Animated Films in Canada | Wages - Job Bank," January 23, 2024. https://www.jobbank.gc.ca/marketreport/wages-occupation/5683/ca?_ga=2.82198165.2078538849.1670259896-654947222.1670259896.

loss, AI technologies should be limited to assistive applications in order to protect the integrity and longevity of our industry.

It is essential that the BC Labour Relations Code ensure that workers are credited and compensated appropriately whenever their work is mined for data for the use of training AI. This data on how human beings think and make decisions is incredibly valuable not only for its use in the direct automation of the work that is being done already, but also for its applications beyond its original use case. Current and historic agreements, whether collective or individual, do not take into account the extraction of this value from the worker. While remuneration models for the use of work for AI training are still nascent, it is undeniable that these models must be developed in order to compensate workers for the immense value this data represents. Additionally, in creative fields like ours, the individual style and voice of each worker is a large part of how one finds work. GAI can scrape, mine and regurgitate a copy of a worker's signature style, and without a credit attached, that style could become completely divorced from them, making it more difficult for them to secure future employment. This right to compensation and credit should be guaranteed under the Code, as it is the regulatory arm most capable of ensuring that workers are protected in this way.

We urge the Panel, when reviewing this submission and all other submissions it may receive on the topic of AI, to make use of the precautionary principle whenever possible. The Panel has a duty to take every precaution reasonable in these circumstances in order to protect workers from the negative impacts of AI technology. Throughout our submission, we have discussed current threats that AI poses to workers and, while there may not yet be fulsome data on how widespread these negative impacts have been, we feel the Panel should not wait for more harm to be done before protections are put in place. The recommendations we have given in this submission are what we feel are reasonable precautions that are within the purview of the BC Labour Relations Code.

To conclude, our Local would like to see the BC Labour Relations Code Review Panel recommend changes the the Code to create the following outcomes:

- Require all employers that intend to introduce AI to their unionized workplace to consult with a union and come to an agreement on how AI may be implemented.
- Require all employers that intend to introduce AI to their unionized workplace to conduct risk assessments and share those assessments with workers and unions.
- Forbid the use of AI systems that monitor workers, evaluate worker performance and evaluate applications for hiring or advancement.
- Ensure that all employer policies concerning AI be written in plain language to ensure transparency and informed consent.
- Ensure that workers have the right to opt out of AI usage and data collection wherever possible and forbid employers from requiring workers to engage with AI that could lead to the automation of their work as a condition of employment.
- Protect workers from AI technology being used to fully automate their work.
- Ensure that workers are compensated and credited appropriately when their work or data is used to train AI.

All of these recommendations would serve to ensure that the BC Labour Relations Code remains based on human-centric labour values. Our Local welcomes new technology that can be used to enhance and uplift the work of our industry and we encourage the adoption of all technology in a responsible manner that preserves irreplaceable human workers. It is the duty of the BC Labour Relations Code Review Panel to amend the code to prevent the irresponsible use of AI technology in the workplaces it governs before harm can be done.

3. Artificial Intelligence Supporting Documents

Our Local would like to submit the following attached documents:

- *IATSE Local 938's submission made to the Federal Government for its Consultation on Copyright in the Age of Generative Artificial Intelligence*

  While this document deals primarily with issues related to intellectual

property, it also provides an overview of many of the impacts generative AI has on our industry and workers. It discusses how those impacts intermingle with ownership of work, privacy and relationships between workers and employers when generative AI is brought into a workplace. Previously distinct legal domains are blurred by generative AI, and our Local encourages the BC Labour Relations Code Review Panel to be aware of the impacts it will have on labour relations.

- *Future Unscripted: The Impact of Generative Artificial Intelligence on Entertainment Industry Jobs*

  Our sister IATSE Local 839 contributed to this report on the impact of generative AI on American entertainment industries. While the exact numbers discussed in this report do not reference research on Canadian businesses, our Local feels that the nature of our business in BC is very similar to that of California and expect the impacts of generative AI to carry a similar weight. This report also succinctly sums up the material impacts of generative AI on jobs in a way that we have yet to observe in a report using Canadian industry research– a shortcoming that is due to the rapidly evolving nature of the generative AI issue. Respectfully, we urge the Panel to consider this demographic research and extrapolate it to the Canadian entertainment industries. The number of jobs in entertainment that will be impacted by generative AI is staggering, and we are hopeful that the Panel will consider the issues proactively in their review of the BC Labor Relations Code.

4. Conclusion

The Canadian Animation Guild appreciates the opportunity to offer its submissions on this matter. We look forward to providing any further information that the Panel or the Ministry may require. Respectfully submitted on behalf of IATSE Local 938.

Sincerely,

Emily Gossmann, Senior Steward

Consultation on Copyright in the Age of Generative Artificial Intelligence

Emily Gossmann
Edited by Loise Liu, Kari Nakken and Leah Clementson

The following text was submitted in a condensed form for the Government of Canada's Consultation on Copyright in the Age of Generative Artificial intelligence on January 12, 2024. It is provided here in its non-abbreviated form for the review of the members of the Canadian Animation Guild.

Section 1 Technical Evidence: Views on technical aspects of AI

I am submitting these responses on behalf of the Canadian Animation Guild, IATSE Local 938 (CAG938). We are a quickly growing union representing animation and video game workers in Canada. Currently we represent 420+ active union members and 600+ workers currently in the process of bargaining their first collective agreements. Additionally, IATSE organisers are collaborating with workers in animation, video games and visual effects (VFX) studios across the country who are seeking union representation. Our local's submissions on this topic are thereby representative of the sentiments of the members of our local as well as the concerns of the broader Canadian entertainment industries that are seeking representation with us or alongside us.

As an international union, IATSE is a member of the Human Artistry Campaign (HAC). As such, our local submission is guided by the Core Principles for Artificial Intelligence Applications in Support of Human Creativity and Accomplishment defined by the HAC. Per the Core Principles for Applications of Artificial Intelligence and Machine Learning Technology published by IATSE on July 5th, 2023 we seek to:

-Ensure entertainment workers are fairly compensated when their work is used to train, develop or generate new works by AI systems
-Prioritise the people involved in the creative process and protect owners of intellectual property from theft
-Improve transparency of the use of AI & machine learning systems
-Prevent legal loopholes that can be exploited by individuals, companies, and organisations in the U.S., Canada, and otherwise

CAG938's members have a strong interest in what shape AI legislation in Canada will take, and we are grateful for the opportunity to make a submission on this topic. This submission will focus on our knowledge of and recommendations for the application of copyright law to generative AI in the industries that our work touches. Alongside these points, our Local would like to assert that it is in support of the Canadian Labour Congress's position that AI regulation is essential across all industries that are impacted by its adoption, not just the

ones that have been designated as “high-impact” by the Canadian Government.

Legislation should be approached from a point of view that places human rights, labour, societal impact, accountability and privacy at the forefront. It is only by ensuring that those priorities are met that Canada can safely rely on AI to improve the lives of its workers and grow its industries. Without those safeguards in place, Canada is at serious risk of enabling harm on a massive scale to the privacy, safety and livelihoods of its citizens. The Canadian government must not allow industry to circumvent the copyright protections that Canadians rely upon to protect both their labour and culture.

In your area of knowledge or organisation, what measures are taken to mitigate liability risks regarding AI-generated content infringing existing copyright-protected works?

Measures to mitigate risk of producing copyright-infringing work are distinct to the different levels of authority and creative involvement that individuals have during a production. The workers, either working on their own or working at a studio, are responsible for sourcing, producing and editing assets, art and writing. Leadership in studios and workplaces will decide upon the methods, tools and programs that artists, programmers and other creatives must employ while working under them. CAG938 is able to provide perspective on what measures are taken by all of these roles to mitigate risks of copyright infringement.

Currently, workers are required to ensure that assets they produce for clients and studios are free of copyright infringing material. Naturally, this responsibility is easy to meet when working with standard artist tools because the actual production of the work employs a multitude of conscious choices. An artist can easily decide to not reuse work they have created for a client in the past, and to not plagiarise work made by another artist. Any risk they are exposed to in the completion of their work is within their own control because they are physically creating it and exercising their judgement at each step of the process. Controlling infringement with human workers is very simple.

However, if workers are required by an employer to use AI in the completion of their work it is no longer easy for an individual worker to ensure the product they produce is free of infringing material. Individual artists are not generally trained in the skills needed to adequately examine the quantity of data needed to train a generative AI model and be able to ensure that dataset is free of copyright-protected material. At the same time, no production schedule would afford them the time to be able to thoroughly examine a dataset, should they in fact have the skills to do so. They would not be able to reasonably remove the ability of a generative AI model to produce work that would infringe on copyright, and would be far less equipped to recognize copyright-infringing works created as a result of the use of AI.

Most animation studios in Canada are not developing their own datasets and models to use for generative AI in-house. Studios are licensing pre-existing datasets and models. Our AI in the Workplace report form hosted on the CAG938 website (CAG938.ca) has received submissions indicating that studios that are introducing AI tools to the production pipeline are using Open AI, Midjourney, Chat GPT, Adobe Firefly and Dall-E in their explorations. Because the studios are relying solely on these outside datasets and tools, they are naturally not taking a role in the curation of the datasets being used. Studios must rely on the developers of these tools to instead report accurately on the use of copyright-protected data.

It is not impossible for a human artist to create work that is copyright-infringing without intending to, but it happens very rarely and at a rate that is reasonable to correct, while work that is created through generative AI is much more prone to infringing on copyright. Art and other creative products are made through the synthesis of human memory and expression and workers generally create based on what they have seen and felt. It is easy for a worker to know when they are intentionally plagiarising someone else. Studio management can thus rely on the creatives they employ to not produce infringing material. Generative AI uses no such self-awareness when working with the massive datasets it relies on. At the same time, it is drawing on a body of work many times larger than any one artist on a team could be aware of and hold in mind. This massive repository of data makes it difficult to recognize infringing output made by the generative AI, because there is no guarantee that the workers on a production would be aware of all of the copyright-protected works in the dataset. From the combination of these two aspects, work created by generative AI is prone to “overfitting” and creating work that would violate copyright protections. The Institute of Electrical and Electronics Engineers (IEEE) recently reported on this issue and assembled a useful demonstration of how easy it is to prompt copyright-infringing material from both direct and indirect prompting. (https://spectrum.ieee.org/midjourney-copyright) If the team of artists and the studio management both fail to recognize copyright-infringing output that a generative AI is likely to produce, it opens both of these groups up to risk.

Largely, the ability to mitigate risk of generative AI producing infringing content is out of the hands of the individuals making artistic and management choices in the Canadian animation industry. The individuals that do have access to the training data are the only ones that can reliably prevent infringing output being produced by managing the data that is input into the model in the first place.

In your area of knowledge or organisation, what is the involvement of humans in the development of AI systems?

The creative industries in Canada have been involved in the development of AI systems by no choice of our own. Our local’s members, and their peers across our industry, are being relied upon as producers of training data. This data can include the scraping of workers’

independently owned and produced artworks as well as the work they produce for hire in studio environments. It is the data they produce both as humans moving through the world, and the reduction of the crafts they have honed throughout their lives into datasets. It is a massive amount of labour and human experience. Generative AI would not have developed to the point that it has without our work fed into it.

In very simple terms, the developers that gather the datasets upon which generative AI relies, produce them through the utilisation of web crawlers, scrapers and data mining. They collect massive amounts of data from across the web and from archives, and sort it into what they decide are usable sets of data using a system such as a Contrastive Language–Image Pre-training program (CLIP). The CLIP essentially figures out what words describe what kinds of images, and from the parsing of those relationships it then knows what it is being asked for when prompted to create something. This explanation is a broad simplification of how LAION curates their LAION-5B dataset, used by many developers including Stability AI, Midjourney, and Google (https://laion.ai/blog/laion-5b/), and how Open AI describes their own CLIP approach (https://openai.com/research/clip). Deeper intricacies in the process exist, but this is a decent summation of the processes from a layman's understanding.

Even though the majority of artists and creative workers in the Canadian entertainment industries are not writing code, we are involved in the creation of these systems as subjects of study. The generative AI's outputs suffer when the input of training data is interrupted, either through cloaking artwork through the Glaze program (https://techcrunch.com/2023/03/17/glaze-generative-ai-art-style-mimicry-protection/) or actively attacking the images in the data source through data "poisoning" tools such as Nightshade (https://www.technologyreview.com/2023/10/23/1082189/data-poisoning-artists-fight-generative-ai/). When we are removed from the generative AI process, it ceases to function. As essential players in the creation of this technology, we have a right to decide how it is used.

How do businesses and consumers use AI systems and AI-assisted and AI-generated content in your area of knowledge, work, or organisation?

Generative AI can show up in myriad ways across the Canadian Animation and Video game industries. From our Local's "AI in the Workplace" report form, we have received reports of the use of AI in pre-visualization, design, writing, compositing and in at least one visual effects studio, all steps of the pipeline. Beyond our report form, generative AI has been used to create short animations in their entirety for large clients such as Disney and Warner Music. It has also been introduced into production pipelines in large and small ways from assistive colouring, to automation of processes, writing of emails and sorting of job applications.

In terms of the making of art and other creative assets, studio management often hopes to use AI as a tool to cut labour costs by automating work. The 2023 Writers' Guild of America (WGA) and Screen Actors' Guild (SAG-AFTRA) strikes in the United States spotlighted the lengths to which the The Alliance of Motion Picture & Television Producers (AMPTP) were willing to go in their desire to have free rein to automate the labour of their workers. The WGA struck for 148 days and SAG-AFTRA struck for 118 days before the final tentative agreements, that included protections against AI, were accepted. The AMPTP and their affiliated studios are large clients of the Canadian entertainment industries as well, so their interests are naturally replicated in the studios that service them and employ Canadian workers. Unregulated AI usage could result in a marked shrinkage of the animation, video games and visual effects industries and result in a large loss of jobs.

Another harmful angle that arises from AI being used to cut costs on creative work is the loss of unique Canadian artistic expression in a broader media landscape. Canadians have a distinct and valuable perspective that is appreciated all around the world. Within our nation, we also have incredible varieties of human experiences and subjectivities that, when cultivated properly, create a rich and thriving culture. The nature of AI data training asks it to generate output based on the patterns identified in the training data. Therefore, it tends to recreate any bias present in the training data (https://www.ibm.com/blog/shedding-light-on-ai-bias-with-real-world-examples/), reducing its output to being a reinforcement of dominant attitudes in culture. Additionally, because AI is unable to observe and experience the world and develop a sapient subjectivity, it cannot innovate or push the boundaries of art in the way Canadians always have. Many great Canadian artists in the animation industry paid their bills and developed their unique artistic voices with the very same jobs that are at risk of automation. The wisdom and creativity that gave Canadian animation such a distinct history risks losing their next generation to the cost-cutting associated with generative AI automation.

In the future, there may be room for AI to be used in the form of assistive tools to help make the work of creatives more efficient without resulting in automation of their labour. Canadian software developers have created tools that have become standard across the international animation industry, such as the Toon Boom suite of programs, the industry standard 3D software Maya and a robust and powerful VFX software known as Houdini. Canadian-developed assistive AI software, that could rise to the international standard level that other Canadian-developed tools have achieved, risks being lost in the current climate around generative AI. Generative AI banks on false promises about what it can accomplish, and sells itself as a replacement for skilled human labour. The natural disdain and distrust for technologies peddled in this way stymies the potential for adoption of actual useful AI applications that could elevate human performance. Copyright legislation that protects the labour of creatives will also create markets for Canadian AI ingenuity that can exist alongside creative workers.

In summary, the most widespread use of generative AI is for cost-cutting and automation. This reduces both the value of Canadian talent and threatens the income of Canadian professionals in the animation, video games and VFX industries. The reproduction of dominant cultural biases by generative AI devalues and erases Canadian cultural contributions. The fear of automation and job loss that comes with unregulated generative AI also limits the development of nuanced assistive AI tools, reducing markets for Canadian AI innovation.

Section 2 Text and Data Mining: Views on how the copyright framework applies to text and data mining (TDM) activities

What would more clarity around copyright and TDM in Canada mean for the AI industry and the creative industry?

More clarity and regulation around copyright and TDM, if applied appropriately, would help to boost both the AI industry and Canada's creative industry. Regulations that protect the copyright of creatives and ensure that they are fairly compensated for the use of their works, or that allow them to opt out of the use of their works all together, will give artists the safety and confidence they need to be able to work alongside this new technology. When TDM practices are regulated by copyright and their capacity to do harm to artists is curbed, it can be properly explored as a tool to enhance human expression, rather than curtail it.

As TDM legislation in Canada stands, it does not give any individual person or business the right to opt out of having their data mined. This lack of control, combined with the fact that large quantities of data that is being mined was scraped from public internet pages leaves many Canadian artists feeling deeply exposed and has broken their trust in the safety that existed in public virtual spaces previously. The LAION-5b dataset was created through the TDM of the data collected by Common Crawl (https://commoncrawl.org/). Common Crawl is a project that employs web crawlers and data scraping to maintain what it describes as "a copy of the internet." LAION-5b is used as a dataset for Stability AI, Midjourney, Google's Imagen, Dreamup and more generative AI models. It is possible for a developer to download the majority of an artist's professional and personal body of work, mine it for data, and then generate work that either is directly infringing on that artist's copyright or so similar to their work that it would be mistaken for their output, without ever consulting with the artist in question. Where there is no opportunity for consent, there can be no trust in the technology.

In certain cases, when an artist attempts to exercise their copyright and put an end to their work being subject to TDM for use in generative AI, the lack of regulation in copyright law emboldens the developers to double down on their efforts. This backfiring was the experience of Sam Yang, a Toronto-based artist who has cultivated a successful career as

an arts educator online. (https://www.thestar.com/news/canada/whose-art-is-this-really-inside-canadian-artists-fight-against-ai/article_54b0cb5c-7d67-5663-a46a-650b462da1ad.html) Yang found himself unable to rely on existing copyright framework to put a stop to the infringement, because existing copyright law does not adequately delineate what is infringement. In the absence of regulation comes abuse.

When copyrights are respected, and the work that can be done in AI in Canada is limited to actual innovation within these parameters, that is when truly useful tools will begin to be developed. Most generative AI applications on the market currently are incredibly polished randomization tools that utilise mass amounts of copyright-protected work without consent in order to generate massive amounts of flashy output. While generative AI output may appear to be impressive, especially when evaluated against past iterations, it betrays a marked lack of competency or insight. When evaluated against the work of amateurs or even children, the errors that are made by generative AI are incredibly elementary and are easily observable after any focused scrutiny. This lack of substantial competency casts doubt on the efficacy of the tools and undermines the credibility of those developers. Additionally, it undercuts the credibility of any future developers innovating in AI spaces. Enforcing copyright on TDM and other AI development processes will reduce the number of flashy but otherwise insubstantial products, and allow the market to explore truly innovative technology.

Canadians must be able to exert control over their copyright protected data and choose whether or not it will be made available for TDM. The ability for copyright holders to opt out of the TDM process is essential to copyright legislation. Ideally, legislation would allow for all Canadians to enjoy security in the knowledge that their personal and copyright protected data may not be used for TDM as a default assumption. Clarity and regulation on what data may be used for TDM and how individuals and businesses can enforce those regulations will level the playing field for the use of generative AI in Canada and allow all parties involved in the process to move forward together.

Are TDM activities being conducted in Canada? Why or why not?

Text and data mining activities are most assuredly happening in Canada, and the copyright protected data of Canadians is being processed through TDM. We have observed the data of our Local's members being captured as well as the data of our industry peers, and the low barrier to conducting TDM makes it easy for anyone in Canada to engage in this practice. While it may be possible to itemise a list of every individual running small or large scale TDM applications, it is less useful than examining the evidence that TDM is impacting Canadian industry regardless of where it is being conducted.

The data of Canadian artists is being processed through TDM for the purposes of creating

generative AI. Examining the Midjourney name list alone, which was entered into evidence in the Andersen v. Stability AI Ltd. lawsuit in California, makes it clear that developers relied heavily on the work of Canadian artists in order to train their generative AI. (Andersen v. Stability AI Ltd. Exhibit J https://storage.courtlistener.com/recap/gov.uscourts.cand.407208/gov.uscourts.cand.407208.129.10.pdf) Amongst this list of names, our union identified a number of our members (we will not be publishing their names here, to protect their identities in an industry with low union density) as well as clients for whom our members have worked in a professional capacity. Canadian labour is present in the bodies of work captured from companies like Riot Games, and is likely captured in works attributed to animation designers and directors such as Lauren Faust (My Little Pony, produced for almost a decade in Vancouver) and Justin Roiland (Rick and Morty, Solar Opposites) who have produced much of their shows with Canadian talent. Other notable Canadian visual artists that are included in the Midjourney name list include: Danny Antonucci, Richard Williams, Seb McKinnon, Joy Ang, Anastasia Ovchinnikova, Jason Rainville, Zara Alfonso, Janine Johnston, John Howe, Michael Walsh, Kate Beaton, Fiona Staples, Attila Adorjany, Bobby Chiu, Ryan North, Nina Matsumoto and more. All of these artists are leaders in their fields, and that has made them a target for TDM. Further, the presence of these names on the Midjourney list indicates that these are artists that the program was trained to specifically recreate. Works by many other artists yet to be identified have been mined to make up the rest of the training data to populate broad categories of aesthetics, movements and descriptors. Canadians are world leaders in arts and entertainment, and that makes them targets for TDM.

TDM is an easily accessible tool for those with sufficient technical knowledge. A brief internet search quickly turns up the Contrastive Language-Image Pre-Training (CLIP) code that is used by many generative AI developers. (https://github.com/openai/CLIP) If that particular TDM tool doesn't meet the needs of a project, there are curated lists of open source large language models (LLMs) available for download (https://www.datacamp.com/blog/top-open-source-llms) as well as a variety of proprietary options that can be licensed. Some research efforts, such as the BMO Lab for Creative Research in the Arts, Performance, Emerging Technologies & Artificial Intelligence, will publish how and why they are using TDM (https://bmolab.artsci.utoronto.ca/?page_id=250) while many private sector and for-profit ventures will not. But, with this ease of access, it is easy to assert that where generative AI is being developed, TDM is happening alongside.

TDM is being used in Canada, and being used on the work of Canadians. The Canadian Government has a responsibility to regulate its use.

Are rights holders facing challenges in licensing their works for TDM activities? If so, what is the nature and extent of those challenges?

Canada's existing privacy and copyright law does not adequately require the people

conducting TDM to approach copyright holders for licensing in order to gain access to their bodies of work. Because these developers needed a massive quantity of data and were able to acquire it for free using datasets like LAION-5b and similar tools, they had no incentive to ask permission or pay rights holders accordingly. It follows that models for licensing works at that scale can't exist without both parties entering into good faith negotiations about employing them. Alongside these issues, the lack of clarity on what copyright is granted to work created by generative AI makes it challenging to negotiate a fairly priced licence for TDM.

What kind of copyright licences for TDM activities are available, and do these licences meet the needs of those conducting TDM activities?

Currently, licensing for AI training is being explored most often by companies that are in the business of selling stock photos, fonts, plugins and auto-actions for creative programs. Their pricing structures are reflective of those existing industries where a customer pays once for access to the assets, pays a higher fee to use those assets commercially, and then pays a fee on top of that for using the assets to train AI. These companies also hold in reserve the right to negotiate costs for widespread or corporate usage of their materials in line with how they currently licence their other products. While still nascent, this is a useful framework to apply to licensing work for TDM as it allows for nuance based on the intended use of the data.

If the Government were to amend the Act to clarify the scope of permissible TDM activities, what should be its scope and safeguards? What would be the expected impact of such an exception on your industry and activities?

Any amendments to the Act to clarify the scope of permissible TDM activities must require that TDM not be conducted on data that is not appropriately licensed for TDM or any data that is not given with clear and enthusiastic consent for use in TDM. In line with existing levels of access, Canada generally is most permissive in terms of access and copyright when activities are conducted for research purposes. Canada's own Panel on Research Ethics states that "An important mechanism for respecting participants' autonomy in research is the requirement to seek their free, informed, and ongoing consent. This requirement reflects the commitment that participation in research, including participation through the use of one's data or biological materials, should be a matter of choice and that, to be meaningful, the choice must be informed." (https://ethics.gc.ca/eng/tcps2-eptc2_2022_chapter1-chapitre1.html#a) It stands to reason then that TDM and the industries, processes and models that rely upon it should not be subject to any less stringent regulations than researchers would.

The impact of regulating TDM in this way would serve to respect and protect professionals in the creative industries. Those who are enthusiastic about being included in research and

commercialization of AI will be able to engage with the process in a way that prioritises their autonomy. All individuals that would like to remain separate from the development of generative AI will also be able to do so. This equitable and fair relationship will allow both industry and technology to flourish alongside each other.

Should there be any obligations on AI developers to keep records of or disclose what copyright-protected content was used in the training of AI systems?

AI developers should be required to keep records of all copyright protected data used in the training of their AI systems and to be able to disclose that data when prompted. To enable that record keeping, metadata should be retained when scraping images and/or conducting TDM. This requirement will allow AI developers to maintain an accurate database of what is referenced in their datasets, and curate and credit that data accordingly. In order to enforce copyright, one must be able to know whether or not copyright-protected work has been used in a process, so records must be kept and reported on.

The disclosure of the use of copyright-protected works in a generative AI product to the public is also essential. Especially in cases where generative AI produces an output that could be mistaken for the distinct style of an individual artist, it must be made clear that the content was made by AI and not the individual. This measure would prevent fraud and issues that arise from misattribution and misrepresentations of an individual artist's values or ideologies. The public facing disclosure must be clear that AI was used to create the work and provide instructions on how to request the details of the data used from the developer.

What level of remuneration would be appropriate for the use of a given work in TDM activities?

The question of remuneration is impossible to adequately answer without a precedent declared on what copyright the user of the AI system will hold on the content that they make, and what opt-in and opt-out rules will be.

Remuneration should likely follow the current standard for licensing tools like fonts, computer programs, stock image libraries, or other art assets. Licensors should be able to determine the cost of the licence based on the demand for their work and what income they stand to lose by allowing a process to be automated. Standard conditions such as temporal licence terms, terms of service/ end user licence agreements and all other avenues of individual negotiation should be applicable to the licensing process.

Are there TDM approaches in other jurisdictions that could inform a Canadian consideration of this issue?

As a competitor in a global market, Canada must look to other leaders when shaping their TDM policy. The European Union has recently passed privacy and copyright legislation that sets a strong example for how to handle these emerging technologies.

Newly passed AI legislation in the EU and the statements that surround it makes it clear that TDM must respect the EU's copyright law, and divorces that copyright law from AI law in order to make clear that AI technology cannot influence the conditions for copyright, and cannot be a special case exception to the laws.

"Any use of copyright protected content requires the authorization of the rightholder concerned unless relevant copyright exceptions apply", and "where the rights to opt out has been expressly reserved in an appropriate manner, providers of general-purpose AI models need to obtain an authorisation from right holders if they want to carry out text and data mining over such works."

Alongside this assertion, they go further to emphasise that any TDM activities or AI products or services that seek to do business in the EU must conform to their copyright and privacy standards.

"Any provider placing a general-purpose AI model on the EU market should comply with [the obligation to put in place a policy to respect Union copyright law], regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of these foundation models take place. This is necessary to ensure a level playing field among providers of general-purpose AI models where no provider should be able to gain a competitive advantage in the EU market by applying lower copyright standards than those provided in the Union."

The EU will also be requiring all general purpose AI developers to: "put in place a policy to respect Union copyright law in particular to identify and respect, including through state of the art technologies where applicable, the reservations of rights expressed pursuant to Article 4(3) of Directive (EU) 2019/790;" And "draw up and make publicly available a sufficiently detailed summary about the content used for training of the general-purpose AI model, according to a template provided by the AI Office;"

It is also worthy of note to highlight that these obligations apply to general purpose AI developers, as mentioned above. The EU recognises that regulating AI outside of designated high-risk applications is necessary to the well being of their member nations. Canada would be well served to adopt a similar approach.

With the EU being not only a long-time ally of Canada, as well as an influential and important market, it serves Canada well to match or improve upon the EU's policies around

TDM and AI in order to maintain a healthy trade relationship with the EU.

Section 3 Authorship and Ownership of Works Generated by AI: Views on how the copyright framework should apply to AI-assisted and AI-generated content

Is the uncertainty surrounding authorship or ownership of AI-assisted and AI-generated works and other subject matter impacting the development and adoption of AI technologies? If so, how?

The uncertainty around the rights to ownership and authorship of works created with AI is absolutely a stumbling block in the development and adoption of AI tools. The myriad processes involved in the creation of generative AI outputs, coupled with the lack of regulation has left many individuals and businesses interested in the space to wait for precedent to be set before exploring their options. In creative industries, ownership of intellectual property (IP) is an essential element of conducting our business and compensating parties involved in projects. When the rights are unclear in these situations, all other processes that depend on the IP agreements get bottlenecked or threatened with liability. It is impossible for any widespread use of a new technology to be adopted in an entertainment industry when IP rights aren't clearly delineated.

Should the Government propose any clarification or modification of the copyright ownership and authorship regimes in light of AI-assisted or AI-generated works? If so, how?

The government should propose clarification on copyright ownership for AI-assisted and AI-generated works, and it should do so in a way that is carefully informed by the nuances of different use cases and the impacts those uses have. Generally, our Local supports copyright legislation that grants authorship only to work created by humans. (ie, in the case of a storybook with AI illustrations and human-written text, the text would be subject to copyright and the illustrations would not.) Within that stance, we feel that there are some nuances that must inform copyright law for AI-generated works:

-What were the terms of the licence on the training works that the AI-prompter used to generate their product? Works generated using source material from the public domain should not able to be copyrighted by a prompter, content that is generated using works made in "for hire" agreements that predate the application of generative AI should not be able to be copyrighted by the prompter, and works generated by infringing upon copyright or privacy should also not be able to be copyrighted by the prompter. However, in a case where both parties enter into an agreement where the individual from whom the training data is being sourced from is willing to grant copyright to the prompter, some allowances for copyright may be made.

-What were the terms of the licence for the TDM and other AI software the prompter used to generate their product? It is unclear if the hand that an AI developer has in writing TDM parameters entitles them to any editorial authorship. There may be methods outside of the mainstream of generative AI where developers working with LLM could be exerting creative authorship through their curation processes when making more sophisticated generative AI models than Stability AI, Midjourney, Imagen, Dreamup and their competitors. Currently, these generative AI programs take a position of neutrality in the creative process, similar to how an art creation program such as Photoshop does, but there may be other developers in the field that merit a more nuanced position.

-Did the prompter create all of the data/work that was used to train the model? Do they own the copyright to that data/work? If an artist is using AI assistance or generative AI that has been trained solely on their own creative output, that could be looked at as a nuance that allows for copyright to be applied to an AI product. Artists currently make assistive tools such as custom typefaces or art brushes to automate parts of their processes to increase their own productivity without a loss of copyright on the finished product. When made with entirely their own copyrighted material, it should fall within copyright protected works.

-If a work is created with AI-assistance, to what extent was the labour completed by a human and to what extent was the work generated by AI? When authorship based on the above examples is unclear, decisions regarding copyright protection should heavily favour the amount of human labour that goes into producing the end result. This will help to retain value on the physical and creative work of humans, and the innovation and creativity that is intrinsic to that process.

Are there approaches in other jurisdictions that could inform a Canadian consideration of this issue?

Both the United States and the EU have created precedent that human authorship is an essential element of making anything eligible for copyright protection. As mentioned above in our submission regarding TDM in the EU, our local feels that AI policy in the EU is a solid reference point for Canada. Seeing consensus for this position in our closest trading partner, the United States, reinforces our position that these are good examples to follow when crafting Canadian Legislation.

Section 4 Infringement and Liability regarding AI: Views on questions related to copyright infringement and liability raised by AI.

Are there concerns about existing legal tests for demonstrating that an AI-generated work infringes copyright (e.g., AI-generated works including complete reproductions or a substantial part of the works that were used in TDM, licensed or otherwise)?

Existing legal tests for copyright infringement were written with human-scale infringement in mind, and legal frameworks that are reasonable for humans are not reasonable when evaluating machine processes. A new mode of evaluation must be created to specifically evaluate AI-generated material.

Human-scale and generative AI-scale remix and sampling are very different, any output that is produced by these two modes is different as well, even if they appear similar on a surface level. The concepts of transformative works and fair-use function on the transformation created by the synthesis of a human's intent and subjectivity creating new meaning from the copyright-protected works that are referenced. As of yet, generative AI models have not been proven to be capable of exercising judgement, expressing a subjective stance or demonstrating any awareness of what the output they are creating means in any human-equivalent way. In their paper, "On the Dangers of Stochastic Parrots: Can Language Models Be Too Big? 🦜" (https://dl.acm.org/doi/10.1145/3442188.3445922) authors and AI researchers Emily M. Bender, Timnit Gebru and Angelina McMillan-Major warn that generative AI is only capable of creating human-like expression, and that the meaning seen in generative AI is brought to it by the viewer as a result of a very human desire to ascribe meaning to recognizable patterns. What AI produces is stochastic, or random, sequences of forms or words that have a high probability of matching what a prompter has requested. Similar to how a parrot may be capable of saying the words "pretty" and "bird" but has no sapient knowledge of what either of those phrases signify.

AI is factually incapable of the synthesis and meaningful expression that a human being is able to perform. With this essential distinction in mind, the best way to rule on infringement in cases of AI-generated content is to examine the training material for unlawfully-used copyrighted material. To ascribe any weight to the perceptual difference that is created through the generative AI production process as transformative work is to distract oneself from the material realities of the processes and their real-world implications. If an AI-generated work relies on copyright-infringing material to be generated, it is violating copyright.

What are the barriers to determining whether an AI system accessed or copied a specific copyright-protected content when generating an infringing output?

Many developers of generative AI are secretive about their datasets and the parameters they apply when using TDM to build their generative AI models. Datasets like LAION-5b are massive and sample even more massive source material. LAION-5b is "5.85 billion pairs of image URLs and the corresponding data", which is a 240 terabyte bundle of files, and it is based on Common Crawl's repository of web data, which boasts a size of multiple petabytes of data. (One Petabyte is equal to 1000 terabytes.) While LAION-5b includes the metadata of their image-text pairs in their dataset, the preservation of this metadata is up to

the next user of the dataset. If this metadata is destroyed, it becomes incredibly difficult to search a massive repository of data for infringing images.

Additionally, copyright-protected materials can be “laundered” to dodge copyright protection and create the illusion of a generative AI system that is capable of creating works without infringing input. In her paper for the IEEE, *"AI Imagery and the Overton Window of Data Laundering”* author Sarah K. Amer describes the data laundering process in text to image generators as follows:

“STEP 1 Visual media (pictures, art, illustration, logos, etc.) is scraped from the internet
STEP 2 Scraped media is stored in a dataset or group of datasets
STEP 3 Scraped media is used to train AI text-to-image models using GAN and Diffusion architecture
STEP 4 Training produces and stores latent images based off of the original media
STEP 5 New imagery is later generated from the stored latent image bases by an AI end user to sell”

Amer goes on to describe that companies will gain access to copyright protected works as part of research projects under non-profit and academic entities. Once the data laundering is complete as part of the research stage, the companies will sell their laundered dataset and model and become for-profit organisations. (https://arxiv.org/pdf/2306.00080.pdf) This shell game obfuscates the path the data took to becoming training material for a generative AI model, and it is currently unclear what the legality of this pipeline is.

Our Local, and the entertainment industry at large, feels that this laundering process is not substantially transformative of the copyright-protected source material in theory or in practice. We feel it is clear, for reasons we have stated above, that generative AI models are not capable of the meaningful synthesis that constitutes transformative works and that the products of these generative AI programs still appear to be copyright-infringing after this laundering process . Regulation must close this legal loophole that has been exploited to make it difficult to prove that generative AI is infringing copyright.

When commercialising AI applications, what measures are businesses taking to mitigate risks of liability for infringing AI-generated works?

Use of AI applications in the creative sectors in Canada is largely conducted in an end-user capacity, and not in a developmental capacity. Many large studios are avoiding applications of AI at any large scale because they cannot exercise meaningful oversight of the data used to train AI tools, and their actual liability in the process is legally unclear. Studios insulate themselves from risk by relying on AI for steps of the creative process that are not broadcast or published in an obvious way. This can take the form of ideating works that will be redrawn by human artists, automating image editing, or other uses that create the

appearance to the viewer that generative AI was not used.

A small number of studios and individuals have sought out agreements with copyright holders that allow for licensing and consent around content use for training generative AI, and the more successful examples of this look like the copyright regulation suggestions we have made in this submission. Unfortunately these examples are the exception and not the rule.

Should there be greater clarity on where liability lies when AI-generated works infringe existing copyright-protected works?

Yes, the Government should clarify liability in the case of AI-generated works infringing on copyright protected works. Liability for copyright infringement lies with any parties that were responsible for the assembly, curation and direction of the dataset. Whether those parties are the developers creating the generative AI tools, or the clients or users of those tools that freely chose to use those tools and publish the product of them. Developers should be responsible for providing accurate information to clients and users about the copyright status of the materials in their datasets, and should they misrepresent that information, the clients and users should be released from liability.

Additionally, when it is unclear who amongst the developers of generative AI is ultimately liable for infringement caused by AI, claimants should be able to exercise multiple avenues in order to claim compensation. If no individual person can be clearly found to be at fault, strict liability claims should be open to claimants. And in cases where errors have led to the issue, claimants should be able to claim compensation as they would for a defective product.

Are there approaches in other jurisdictions that could inform a Canadian consideration of this issue?

Again, it behoves the Canadian Government to look to the EU for examples on effective approaches for liability in copyright infringement. While the functionality of Canadian legislation will be different than a multi-state entity like the EU, we urge Canada to look to the ethos behind the EU's Artificial Intelligence Liability Directive. This directive seeks to make it easier and simpler for the claimants who are harmed by AI to seek compensation for that harm, because it is easier for AI to harm those claimants. This would be an essential step in levelling the playing field between rights holders and any bad actors that are utilising AI to infringe on those rights. When it becomes easier to violate rights, it must also become easier to defend those rights.

Section 5: Are there any other considerations or elements you wish to share about copyright policy related to AI?

In closing, our Local would like to emphasise how essential it is that copyright law is not considered in a vacuum when dealing with AI. Privacy law is an essential part of this discussion, and many aspects of the generative AI issue must be addressed through a lens of protecting the privacy of Canadians.

Throughout this submission, our arguments have focused on the very real impacts of generative AI and copyright on the professional work and livelihoods of Canadian artists and entertainment workers. For workers in our industries there is not always a clear line between our personal and professional lives, especially when one attempts to draw it around things we have created. We work for studios, we work for ourselves, and we share art in public to build community. With the lack of privacy protections in Canada around TDM that don't guarantee individuals the right to opt-out of these processes, Canadian artists are at risk of losing the spaces they have relied upon in order to share skills, network and build a world-renowned industry. Privacy laws must account for all of these nuances in order to preserve the livelihood and wellbeing of Canadian creative workers.

Privacy and copyright legislation must work together to protect Canada's vibrant creative industries. All regulations must put workers first, and not fail to support the preservation and elevation of Canadian innovation and creativity. Regulations must ensure that rights holders are able to exercise control and consent over how their work is used, that workers are fairly compensated for their labour, that the needs of people are prioritised over the development of technology, that practices around AI are transparent and that all loopholes that allow for the exploitation of workers and rights holders are closed.

The members of CAG938 and the workers that make up Canada's world class entertainment industries will be watching the Canadian Government's decisions on this matter closely. We are hopeful for a bright future that values human expression, labour and fairness for all.

Respectfully submitted on behalf of the Canadian Animation Guild, IATSE Local 938.

Canadian Association of Counsel to Employers

CACE

Association canadienne des avocats d'employeurs

Submission to the *Labour Relations Code* Review Panel on behalf of the Canadian Association of Counsel to Employers

March 13, 2024

BACKGROUND OF CACE

The Canadian Association of Counsel to Employers ("CACE") is a national not-for-profit corporation and an association of management-side labour and employment lawyers. CACE has over 1,850 members who are lawyers employed in the private sector, employed by governments and in private practice.

CACE's core objectives include: (i) providing governments, courts, labour relations boards, and other administrative tribunals with input respecting policy and legislative reform from the perspective of lawyers acting on behalf of employers in Canada; and (ii) maintaining relationships and dialogue with labour, employment and other related tribunals, commissions and stakeholders.

CACE is the only national organization of management-side labour and employment lawyers. Its members work in every sector of the economy and practice in all Canadian provinces/territories and federally. CACE is thus uniquely positioned to provide and explain the legal perspective of employers on employment related matters.

One of CACE's top priorities is presenting timely and substantive submissions on public policy matters of interest to its membership. CACE regularly monitors key developments in the legislative and regulatory spheres, at both the federal and provincial levels, and the developments in Superior Courts in each province. CACE frequently intervenes at the Supreme Court of Canada and appellant court level to provide the legal perspective of employers on cases of importance to Canadian employers.

A balanced approach to the Review' Panel's mandate requires an appreciation of the perspective of employers in British Columbia. CACE members are concerned with ensuring that labour legislation promotes consistency, certainty, predictability and institutional integrity.

MANDATE OF THE REVIEW PANEL

In correspondence to the labour relations community dated February 2, 2024, the Review Panel advised that its terms of reference arose from the Premier's December 22 mandate letter to the Minister of Labour. As a result of that mandate letter, the Review Panel has been directed to address the issues canvased with and by stakeholders with consideration of section 2 of the *Code*.

In *Re Judd*, [2003] BCLRBD 63 ("*Judd*"), a plenary panel of the Board identified section 2 of the *Code* as providing "the guiding principles for all *Code* provisions" (at para 15). The *Judd* decision also supports the following propositions:

- Section 2 is now a "duties" provision rather than a "purposes" provision as it was formerly (para 15)

- Section 2 sets out a comprehensive view of labour relations which is to be followed by the Board and others who exercise and perform duties under the *Code*. It sets out a vision of labour relations which describes the goal of system to the immediate parties; places those goals within a larger, societal context; and emphasizes the mechanisms by which to proceed towards those goals (at para 18)

As noted in the *Judd* case (at para 22), section 2 places these matters in the larger public interest. As set out in your letter of February 2, 2024, the Review Panel must approach its task with due regard for the provisions of section 2 of the *Code.*

EXPEDITED UNFAIR LABOUR PRACTICE HEARINGS

Under section 5(2) of the *Code*, if a complaint is filed with the Board alleging that an employee has been discharged, suspended, transferred or laid off from employment or otherwise disciplined in contravention of this *Code*, the Board must:

- commence a hearing on the complaint within three days of its filing (s.5(2)(a)); and
- promptly proceed with the hearing without interruption, except for any necessary adjournments (s. 5(2)(b)).

The experience of CACE's members is that this expedited time limit cedes to the complainant union an unfair advantage which is inconsistent with the promotion of conditions favourable to the orderly, constructive and expeditious settlement of disputes. A complainant trade union controls the time of the filing of the complaint. It has time to marshal its witnesses, prepare its evidentiary brief and legal argument prior to the filing of the complaint. The experience of CACE's members is that many of these complaints are filed on a Friday which means that the employer's ability to have the same opportunity to prepare does not align with the advantage ceded to the complainant union. In these circumstances, the employer's ability to marshal its resources to meet the complaint is severely hampered because the time limit runs over a weekend where access to witnesses will necessarily be attenuated. The administration of this provision, in accordance with the strict terms of the legislation, is neither fair, nor balanced. It cannot have been the intention of the Legislature to impose a response scheme which is inconsistent with the employer having a fair opportunity to respond. It is entirely inconsistent with s. 2(e).

At a minimum, the time limit in section 5(2)(a) of the *Code* should be "three business days".

In addition, the current interpretation of "without interruption" in section 5(2)(b) of the *Code* requires a hearing to continue through weekends and statutory holidays. This requires Board resources to be used to staff hearings over the weekend and has a deleterious impact on the personal lives of union

and employer clients and legal counsel. CACE recommend that the language in section 5(2)(b) of the *Code* be changed to "without interruption on consecutive business days."

DECERTIFICATION

Revocation of bargaining rights is dealt with under section 33 of the *Code*. On a number of occasions throughout that section, certain time bars are raised prohibiting an application for certification for designated time periods following the cancellation of a certification. The often expressed purpose of these time bars is to provide for a period of stability to permit the workplace to recover from the often contentious events which accompany an application for decertification by employees. However, section 33(10) which provides a 10 month time limit, only makes that time limit applicable to unions other than the incumbent trade union whose certification has just been cancelled. The language of the time bar specifically states that "no other trade union may apply for certification." (see *7-Eleven Canada Inc*., 2000 BCLRBD 223 ("*7-Eleven*")

The result of the *7-Eleven* decision is not consistent with the Board's own published guidance which provides that: "if the bargaining unit is decertified, no union can apply for certification to represent employees in the bargaining unit for 10 months after the date of decertification." The Board's guidance is consistent with ensuring a period of stability after what can be a very disruptive time in the workplace. The legislation should be amended so that the prior application time bar set out in section 33(10) applies equally to all unions. Alternatively, in light of the removal of the requirement for certification to be granted without a vote based upon membership evidence, membership cards signed while the incumbent union is still certified should not be valid membership evidence for any application under section 33(10).

A FAIR GRIEVANCE PROCEDURE

One of the fundamental underpinnings of all labour legislation in Canada is the legislated requirement that a collective agreement must contain a grievance procedure.

Section 84(2) provides:

> 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.

This legislative requirement is so important that section 84(3) provides a mandatory legislated grievance procedure in circumstances where a collective agreement does not contain a grievance procedure.

Throughout section 84 of the *Code*, there are several references to the requirement that an employer have "just and reasonable cause for dismissal or discipline of an employee". Section 82 of the *Code* specifically provides that the purpose of Part 8 of the *Code* is to "constitute methods and procedures for determining grievances and resolving disputes under the provision of a collective agreement…(section 82(1)). Further, section 82(2) provides that arbitrators, appointed pursuant to a collective agreement, "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 collective agreement and must apply principles consistent with the industrial relations policy of this *Code*." Regrettably, recent decisions of the Board have frustrated the proper operation of the grievance procedures contemplated by the *Code* in these sections. In *British Columbia (Ministry of Public Safety and Solicitor General)*, [2020] BCLRBD 28 ("*Solicitor General*"), a panel of the Board upheld arbitral authority to the effect that case law does not recognize an inherent right to pre-hearing disclosure of particulars to employers. More particularly, a panel of the Board endorsed the proposition that the employer is not being denied a fair hearing if the union refuses to provide particulars in a discipline or discharge case.

This approach is not consistent with the industrial relations policy of the *Code* as referred to in section 82(2).This decision is a clear impediment t the grievance procedure serving its role in "determining grievances and resolving disputes". Even without any objective analysis, it is clear that discipline and discharge cases constitute the vast majority of cases dealt with by arbitrators. A failure to provide particulars means that there is virtually no prospect that any dispute over discipline and discharge will be resolved under the terms of the collective agreement prior to an arbitration hearing. It is impossible to discern a path to settlement without particulars of the other side's position. This decision by the Board means that the grievance procedure has now become a simple *pro forma* exercise: the union files a grievance alleging improper discipline or discharge without providing any particulars and the employer just simply says "grievance denied". This was not the intention of the framers of the *Code*.

In addition, failure of compel an exchange of particulars prior to the hearing of a discharge/discipline grievance will, on most occasions, result in the arbitrator having to grant an application for an adjournment because the Employer is hearing about factual defenses for the first time at the hearing. The adjournment is necessary to ensure the Employer is provided a fair hearing.

Further, this approach is completely inconsistent with the requirements of section 2 of the *Code*, and in particular, subsections (d) which encourages "cooperative participation between employers and trade unions in resolving workplace issues" and (e) which makes it a duty under the *Code* for persons who exercise powers and perform duties under the *Code* to "promote conditions favourable to the orderly constructive and expeditious settlement of disputes". An arbitrator, who is a person who exercises powers and performs duties under the *Code*, cannot comply with these duties in circumstances where the employer is not entitled to particulars in the grievance procedure. This decision effectively neuters the grievance procedure in matters of discipline and discharge. At a minimum, arbitrators should be

obliged to ensure that employers are entitled, in discipline and discharge matters, to sufficient particulars to know the case they must meet.

Finally, the current law arising from the Boards' decision in *Solicitor General* is inconsistent with the Legislature's direction in s. 88.1 of the *Code* which requires that an arbitration board must conduct a timely case management conference to, among other things, "schedule the exchange of information and documents" (s. 88.1(a)) and "encourage settlement of the dispute". Clearly, the Legislature has endorsed the view that the settlement role of the grievance procedure is best achieved when, like in all other matters under the *Code*, the parties' positions are transparent. As noted, depriving one party of information in the knowledge of the opposite party, is a barrier to settlement, not encouragement. It should also be noted that the requirement of exchange of particulars is also a key feature of the expedited arbitration process under s. 104 (see s. 104(6.1)(a)(ii). Section 104(a) makes this exchange obligation statutorily applicable to unions.

Section 88.1(a) should be amended to read: "schedule the exchange of information and material documents in accordance with the *Labour Relations Board Rules"*. The *Rules* should then be amended to require pre-hearing disclosure at arbitration in the same manner as the disclosure required in Board proceedings under Rule 2. Proper particulars should be a baseline entitlement of all parties regardless of the nature of the grievance.

REVIEW OF ARBITRATION AWARDS

The current 10 double space pages limitation for review of arbitration awards must be more transparent. It is currently located only on a page of the Boards website in an ancillary document. It should be placed in the Rules. There should also be an express limit on the number of pages in a response.

SECTION 100 OF THE *CODE*

Section 100 of the *Code* should be repealed. The *Code* sets up two parallel streams for review of arbitrator's awards; namely section 99 which confers jurisdiction on the Labour Relations Board and section 100 which confers jurisdiction in certain circumstances on the Court of Appeal. The Court has, on many occasions, stated that these jurisdictions are "mutually exclusive, not concurrent, jurisdictions" (see *Taan Forest Limited Partnership v. USW*, Local 1-1937, [2018] BCCA 322 ("*Taan*"). In *Taan*, the Court noted that this bifurcated jurisdiction is couched in language "often described as brain teasing, awkward and obtuse" (see para 47). In addition to it being virtually incapable of predictable application, the section creates a quagmire of fine distinctions which require both employers and unions to run the risk of an application being foregone because of an inability to properly identify the appropriate forum for review.

This latter point is emphatically apparent when one reviews the following procedural scenarios. In *Canadian Forest Products Ltd. (McKenzie Wood Products Division)*, [2023] BCLRBD 5 ("*CFP – McKenzie*"), the procedure included, in a case which found that employees of the employer were entitled to group termination pay under section 64 of the *Employment Standards Act* ("*ESA*"), the following:

1. An initial application for review of the award at the Court of Appeal under section 100 on the basis that the correct interpretation of section 64 of the *ESA* was a matter of general law outside the scope of section 99. The Court of Appeal disagreed (see 2022 BCCAAA 89) and determined that review of the award fell within the exclusive jurisdiction of the Board under section 99 of the *Code*.
2. Subsequent to the Court of Appeal dismissing its application for a review of the award under section 100 of the *Code*, the employer filed under section 99 of the *Code*. However, section 28(1)(a) of the Board's *Rules* required that an application under section 99 must be made within 15 calendar days of the date the award was published.
3. As a result of the late filing under section 99 of the *Code*, the Board was requested to exercise its discretion to extend the time limit for filing. The union opposed this request. This required a separate decision. The decision notes that parties, out of an abundance of caution, have taken to filing appeals of arbitration awards in both the Court of Appeal and with the Board to avoid filing in the wrong forum. The Board has held that the level of uncertainty concerning the jurisdictional divide between the Board and the Court is not a compelling reason for delaying the filing of appropriate appeal under the *Code*.
4. On the facts of the *CFP – McKenzie* case, the application to extend time limits was granted and the award was subsequently cancelled.

An even more troubling example of the frustration of dealing with the jurisdictional difficulties of sections 99 and 100 is found in *West Fraser Mills Ltd. v. USW, Local 1-2017*, 2021 BCCA ("*West Fraser*"). In that case, a grievance was brought which engaged a consideration of regulation 69 of the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, BC Reg 104/2004 ("*Regulation*"). The arbitrator granted the grievance holding that *Regulation* 69 was "spent" or pre-empted. The employer brought applications for review under section 99 of the *Code* and to the Court under s. 100. The Board dismissed the application under s. 99 finding that the interpretation of section 69 of the *Regulation* was an issue of general law engaging the appellate jurisdiction of the Court of Appeal under section 100. The employer then proceeded with its application under section 100 of the *Code* and the Court quashed the appeal before it for want of jurisdiction. Shortly stated, given the difficulties in deciphering the meaning of section 100, both the Board and the Court of Appeal held that they did not have jurisdiction.

It is of particular concern that in the Court of Appeal's judgment in *CFP - McKenzie*, the Court relied upon sub-paragraph (a) in section 100 as strengthening the analysis of the jurisdictional issue because it could not be said that the question of whether a worker's employment is terminated as "unrelated to a collective agreement." All matters arising under section 100 of the *Code* are related to a collective agreement. The provision relates to an appeal of an arbitrator's award which can only come from a collective agreement. Section 100 is effectively an empty vessel.

Employers and unions ought not to be subject to this lack of clarity. Section 100 should be repealed.

FEDERAL PROVINCIAL JURISDICTIONAL MATTERS

In its recent decision in *Vancouver Shipyards Co.*, [2022] BCLRBD 146 ("*Vancouver Shipyards*"), a plenary reconsideration panel of the Board confirmed that a refusal by members of a provincially certified union to cross the picket line of a striking federal union constituted an illegal strike under the *Code*. It was not activity which was included in the exemption to the definition of strike (para b). This finding was premised upon an assessment of whether federally regulated picketing constituted "picketing that is permitted under this *Code*", a phrase found in subsection (b) of the definition of strike. In reaching this conclusion, the plenary panel noted that a contrary result would mean that the Board would be powerless to regulate a work stoppage by provincially regulated employees where the work stoppage arises as a result of employees choosing to honor a non-*Code* related picket line, whether it be a federal picket line, a political protest or any other non-*Code* related matter. Such a result would be entirely inconsistent with the Board's duties under sections 2(e) and (f) of the *Code* (see para 90). Respectfully, this outcome was the only conclusion consistent with the constitutional divide between federal and provincial law makers over matters of labour relations in Canada.

Over several decades, the Board has had to rule on the interplay between the various constitutional jurisdictions of federal and provincial governments. This jurisprudential journey is considered in detail in *Governor & Company of Adventurers of England, Trading into Hudson's Bay*, [1995] BCLRBD 93 ("*The Bay*"). After reviewing decades of confusing jurisprudence, a plenary panel of the Board concluded:

> 138. Therefore, it is our conclusion that the definition of "person" in section 1 of the *Labour Relations Code* cannot validly include a federal undertaking. The definition of "person" is read down to include only those employers who fall within the legislative competence of the province.

The conclusion in *The Bay*, supra, anticipated the reasoning of the panel in *Vancouver Shipyards* including their conclusion that, as a result of the proper interpretation of Part 5 of the *Code*, the Legislature intended to create an exemption to the definition of strike only to the extent that the impugned conduct occurred as a direct result of and for no other reason than picketing permitted by the *Code*…"(see paras 127/128). The only picketing permitted under the *Code* is picketing within the constitutional authority of the Province to regulate.

The existing relevant statutory provisions, as interpreted and applied by the Reconsideration Panel should not be tampered with. To change the definition of strike to permit provincially certified workers to refuse to cross picket lines emanating from a federal work stoppage will neuter the Code's "common site" picketing restrictions (s. 65(7)) resulting in undue escalations of labour conflict, in a manner unheralded in any other provincial jurisdiction.

We would be happy to discuss these issues with you at your convenience.

Kind regards,

Nicole Skuggedal, CACE President

CCPA
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CCPA-BC submission for the 2024 Labour Relations Code Review

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Submitted to: lrcreview@gov.bc.ca

March 22, 2024

Introduction

Thank you for the opportunity to share our recommendations for the Labour Relations Code Review. The CCPA–BC has a long track record producing research and policy recommendations on workers' rights with a view to a prosperous and just economy. Together with SFU's Morgan Centre for Labour Research, the CCPA-BC is jointly leading a six-year research and public engagement initiative investigating precarious work and multi-dimensional precarity in British Columbia supported by the Social Science and Humanities Research Council of Canada (SSHRC). We hope our contribution will be useful to your deliberations.

The 2024 review of the Labour Relations Code, only the second in more than two decades, comes at a critical juncture for labour relations in British Columbia. It is imperative that this review brings a comprehensive package of reforms to markedly improve workers' abilities to meaningfully exercise their statutory rights to organize and engage in collective bargaining in the current context of fissured workplaces and increasingly insecure work arrangements in many sectors of the BC economy. Specifically, we recommend:

1. Enable the development of broader-based (also known as sectoral or multi-employer) bargaining frameworks in industries employing vulnerable workers.
2. Eliminate barriers to collective bargaining in the Labour Relations Code.
3. Increase the operational capacity of the Labour Relations Board.

Underlying our recommendations is the recognition of the inherent power imbalance in employer-employee relationships, which is magnified for employees who experience intersecting inequalities, including racialized workers, Indigenous peoples, women and lower-income individuals and workers with precarious legal status in Canada. These vulnerable groups of workers are also less

likely to be unionized or covered by a collective agreement, especially in the private sector. It is no coincidence that these workers are much more likely to experience precarious or insecure employment relationships characterized by instability, low pay, a lack of access to benefits in the BC labour market, leading to negative impacts on their physical and mental health, all of which have consequences not only for workers but also for their families, their communities and our society.[1]

Facilitating broader access to union representation is essential to correcting this power imbalance, which remains tilted in favour of employers, especially when those employers are large, often multinational corporations.

The 2018 Labour Relations Code review constituted a significant first step towards rectifying the substantive employer-favoured reforms from the 1980s to the early 2000s, which tilted the scales further away from worker protections. Several noteworthy improvements have been made to the Code since 2018 which have had positive impacts on workplace organizing, such as bolstered successorship rights in a few specific sectors, increased penalties for employer infractions and the re-introduction of single-step certification. We support the retention and enhancement of these measures to extend their benefits to a broader group of workers.

The rapid changes in work structures in recent years, such as the increased 'flexibilization' of work and the expansion of the platform economy, necessitates a reevaluation of BC's nearly exclusive reliance on the traditional (Wagner Act) model of union organizing in the private sector. It is paramount for the Labour Relations Code to adapt dynamically to changes in the organization of work to ensure that it continues to protect workers' rights effectively.

It is time to expand the BC Labour Relations Code to enable broader-based bargaining structures, also known as sectoral bargaining, in particular in industries characterized by small individual worksites and powerful, often multinational, employers that hide behind layers of franchising and subcontracting, where the current model of worksite-based certification makes it impractical for workers to exercise their rights.

Without sectoral bargaining, hundreds of thousands of BC workers will continue to lack meaningful access to union coverage and entire sectors (like hospitality or janitorial services) will continue to be stuck in a race to the bottom that drives down wages and living standards for workers.

[1] See, for example Ivanova, I. and K. Strauss. 2023. *But is it a good job? Understanding employment precarity in BC.* CCPA-BC and SFU Morgan Centre for Labour Research. https://policyalternatives.ca/publications/reports/it-good-job.

Economic context: the urgent need to expand access to collective bargaining

The Canadian labour relations model, based largely on the American Wagner Act, seeks to safeguard economic stability by protecting workers' rights to unionize and legally mandating employers to bargain in good faith with unions.

The ability of workers to come together and collectively bargain for better workplace conditions and higher wages is a key lever to balance the uneven scales of power between employers and workers and make labour relations more fair. There is a large and compelling literature that shows that higher union density is linked to lower income inequality between the highest and lowest income earners and reduced gender and racial pay inequities. CCPA research also finds that unionization and collective bargaining density explain why the pay gaps for women, Indigenous and racialized workers are significantly lower in the public sector than in the private sector in Canada. Collective agreements protect against unfair treatment, discrimination and arbitrary dismissal at work.[2]

Unions are an essential equalizing mechanism not only across workers, but between workers and employers.[3] Unions are vital in increasing wages and bargaining power for middle- and low-income earners and collective bargaining helps to closer align wage increases with growth in productivity.[4]

Inequality in BC has increased over recent decades in lock step with diminishing union density. Too many workers in BC now lack union coverage, particularly in the private sector where only 15% of workers were covered by a collective agreement in 2023. Union coverage is even lower among women working in the private sector (a paltry 11% in 2023).[5] Lower levels of unionization have diminished earnings and bargaining power for middle- and lower-income workers, consequently increasing the income share of corporate management and shareholders.[6]

BC's traditional model of worksite-level union organizing is poorly suited to changing employment structures. BC's evolving economy and workplace structures, influenced by automation, globalization and regulatory evasion, have outpaced the Labour Relations Code, leaving too many workers unprotected. For decades, we have experienced a shift towards so-called "flexible" business models that rely on subcontracted, part-time, and temporary work, particularly in the growing service sectors,

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[2] McIntruff, Kate and Paul Tulloch. 2014. Narrowing the Gap: The Difference that Public Sector Wages Make. Ottawa: CCPA.

[3] ILOSTAT. 2023. Beyond the numbers: Exploring the relationship between collective bargaining coverage and inequality. Geneva: ILO.

[4] International Labour Organization. 2023. Global Wage Report 2022-23: the impact of inflation and COVID-19 on wages and purchasing power. Geneva: ILO.

[5] Statistics Canada. Table 14-10-0070-01 Union coverage by industry, annual (x 1,000).

[6] Osberg, Lars. 2021. From Keynesian Consensus to Neo-Liberalism to the Green New Deal: 75 years of income inequality in Canada. Ottawa: CCPA.
https://policyalternatives.ca/publications/reports/75-years-of-income-inequality-canada

which has contributed to the increasing precarity of work and consequent weakening of workers' collective power.

Since the last Code review, work structures have undergone even more significant transformations driven by technological advancements and external factors such as the global COVID-19 pandemic. The gig economy has drastically expanded, displacing more secure work in certain industries such as taxi drivers, couriers, and some creative roles. Platforms like Uber, Skip the Dishes and various freelancing websites have spearheaded this shift towards the complete atomization of workers and the shirking of employer responsibilities.

Labour relations are an issue of workplace equity. This rise in precarious work has particularly affected women, racialized people and newcomers, exacerbating gendered and racialized income disparities and marginalization.

Our research finds that racialized women, Indigenous women and recent immigrants in BC are more likely to have non-standard employment, which correlates with lower earnings, fewer benefits and job insecurity.[7] Statistics Canada data show that the prevalence of low income in BC is higher for Indigenous people (20% vs 13% compared to non-Indigenous people), racialized people (16% vs 12% for non-racialized people) and recent immigrants (16% vs 12% for non-immigrants). These disparities directly impact workers' quality of life, including their ability to meet their families' basic needs, with 31% of recent immigrants and 42% of non-permanent residents in unaffordable housing compared with 19% of non-immigrants and 28% of racialized people compared with 18% of white people. The impacts of low income and job precarity persist across generations.

It is time for new models of organizing in BC. The Wagner Act model of worksite-level organizing was tailored for the early 20th century industrial context dominated by large domestic firms that offered long-term employment to relatively homogenous groups of workers (primarily white men). This model is poorly suited to today's vastly different economic realities, which explains the low union coverage in many industries, including accommodation and food services, retail, janitorial and security services among others.

In the accommodation and food services sector, where women, racialized workers, immigrants and temporary foreign workers are overrepresented, only 4% of workers are covered by a collective agreement. Workers in this notoriously low-wage sector would greatly benefit from meaningful access to collective bargaining for better wages, job security, benefits and work conditions, but the current requirement for worksite-specific organizing presents virtually insurmountable hurdles given the fractured nature of this work and employers' union-busting practices. Workers at a single fast food location, for example, have little power when negotiating with multinational employers, and even if

[7] Ivanova, I. and K. Strauss. 2023. But is it a good job? Understanding employment precarity in BC. CCPA-BC and SFU Morgan Centre for Labour Research. https://policyalternatives.ca/publications/reports/it-good-job.

they succeed against the odds in obtaining union certification for their worksite, their employer can (and often does) close that particular location in response to the union drive.

For even more atomized workers, like app-based workers or domestic workers (such as nannies and live-in caregivers), the current model is next to impossible.

There's an urgent need for Labour Relations Code reforms to keep up with changing work arrangements to ensure everyone has access to their Charter-protected right to collective bargaining.

Solutions

1. Enable the development of sectoral bargaining frameworks

Given how much the dynamics and demographics of work in BC have changed, there is a pressing need to expand our labour relations frameworks to include sectoral bargaining in order to extend meaningful rights to collective bargaining to more workers.

In the current framework, private sector workers have to organize on a worksite-level basis. This approach is already time-consuming, expensive, and vulnerable to employer [union-busting] tactics for workers in large workplaces and it's downright impractical for workers in small worksites (such as an individual location of a fast food chain, or the cleaners of a single office building) and those in workplaces with a high proportion of non-standard jobs, including part-time, temporary, casual and atomized work.

The only way to extend meaningful access to collective bargaining to those workers is by enabling broader-based bargaining structures, also known as sectoral or multi-employer bargaining, under the BC Labour Relations Code.

While there are different models for sectoral bargaining, they all provide ways to bring together workers across an industry, occupation or geography to negotiate minimum standards across an entire sector. Sectoral bargaining is widespread internationally, and some forms of it exist in much of Europe, in Australia, in South Africa, in New Zealand and elsewhere. In BC, it is common in the broader public sector but it is not used in the private sector outside of movie and television production and construction.

Introducing sectoral bargaining not only has the potential to significantly increase the number of workers benefiting from higher wages and improved working conditions negotiated by unions but also plays a crucial role in fostering a more equitable and productive economy.

A large and compelling body of evidence shows that countries with more centralized bargaining systems like sectoral bargaining have higher collective agreement coverage rates and consequently enjoy better labour standards, including for vulnerable workers, higher levels of employment and lower income inequality between the highest and lowest earners.[8] By fostering broader wage equity for similar roles, sectoral bargaining has been more impactful than workplace bargaining alone in terms of closing pay gaps related to gender, ethnicity and immigration status.

Sectoral bargaining has also been shown to contribute positively to economic productivity. By reducing the potential for competition on the basis of low wages and poor working conditions (resulting in a race to the bottom), sectoral bargaining encourages competition on the basis of productivity instead. The increased collective agreement coverage that comes with sectoral bargaining also improves low-income earners' spending power, which in turn stimulates the local economy.

Recommendations for sectoral bargaining have been put forward by experts in BC since the early 1990s. In the context of increasingly precarious employment practices, sectoral bargaining is more necessary than ever. Designed to complement, not replace, workplace-level bargaining, the sectoral approach would offer a meaningful pathway to unionization in sectors employing a large number of vulnerable workers. Sectoral bargaining can be particularly successful at extending the protective reach of collective bargaining to workers in smaller, franchised, or dispersed worksites as well as for workers in non-standard, part-time, and contracted employment.

In 2018, the Labour Relations Code Review Panel recommended that sectoral bargaining be explored in a single-issue commission, but no such commission has been convened in the 6 years since. There is no justification for putting off this process any longer while BC's most marginalized workers' remain without feasible access to their collective bargaining rights.

2. Eliminate barriers to collective bargaining in the Labour Relations Code

While sectoral bargaining will contribute to higher union coverage than what can be achieved in a purely enterprise-based system, it represents a complement not a replacement for workplace-level organizing. As such, it is still important to enhance the protections available to workers exercising their rights to collective bargaining under the traditional workplace model of organizing.

We applaud the move to restore single-step certification. This has gone a long way to reduce unjust barriers to unionizing and the number of successful certification drives has since increased. However, more needs to be done to remove the obstacles workers continue to face.

[8] See, for example, ILO. 2017. Trends in Collective Bargaining Coverage: Stability, Erosion or Decline? INWORK Issue Brief No. 1. and OECD. 2019. Negotiating Our Way Up: Collective Bargaining in a Changing World of Work. https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm

Modernizing organizing drives

The flexibilization of work, the adoption of new technologies, and the shift to hybrid and remote models in the wake of the COVID-19 pandemic have changed the way workers can communicate with one another. Workplaces are more fractured and employers are more likely to have control over communication channels. This makes union drives more difficult than they ought to be. Requiring employers to provide employee lists during union drives would mitigate the challenges posed by these modern workplace transformations, ensuring continuity in workers' ability to organize effectively.

Reaching a first agreement

After workers have achieved certification, employers can strategically prolong negotiations until the end of the freeze period to circumvent a first agreement. Despite improvements like extended freeze periods and pre-strike mediation options introduced by the BC government following the Panel's 2018 recommendations, employers can still make achieving a first agreement difficult by exploiting delays. Removing time limits on freeze periods would encourage a timely process by removing the benefit of stalling tactics for employers.

Protecting the collective agreement

Once workers have successfully secured a first agreement it is crucial to safeguard these collective agreements from employers' anti-union strategies. A key advancement from the 2018 Code review was broadening successorship rights for employees in building maintenance, security, bus transport, food service and healthcare services. This change has protected the continuity of collective agreements for many vulnerable workers during contract transitions, preserving their employment, wages, and benefits. **Successorship rights are essential for all workers, and therefore these protections should uniformly apply to workers in all sectors.**

Workers need to be protected from other ways in which employers restructure their businesses to circumvent unionization. Employers should not be permitted to circumvent union certification by restructuring their corporate entities, such as by transferring assets from one corporation to another. Where corporate reorganization aims to undermine union certification, these entities should be recognized as one employer.

Upholding workers' collective power

Balanced labour relations must ensure that workers, who have inherently less bargaining power than employers, can fully utilize their collective organizing strength. The BC Code is an outlier in restricting picketing at secondary worksites, a constitutional right. This restriction negates workers' strike power by allowing employers to continue their normal business operations from elsewhere. The Code's language has also proven unclear in terms of protecting workers' right to refuse to cross picket lines when strikes cross jurisdictions. Impeding workers from engaging in these demonstrations of collective strength is counter to the purpose of the Code.

3. Increase the operational capacity of the Labour Relations Board

For the Code to be meaningful, it needs to be enforced. Unfortunately, the key enforcement bodies for provincial workplace rights, the Employment Standards Branch of the Ministry of Labour and the Labour Relations Board, have been underfunded to the point where they cannot adequately administer and enforce the law. This means that for too many workers in BC today, workplace rights exist only on paper and employers can disregard their legal responsibilities without consequence. This undermines the fundamental purpose of the Code to establish balance between employer and employee interests.

As the volume of applications to the LRB continues to increase, boosting financial support for the Labour Relations Board is crucial for advancing workers' rights. Enhanced funding would enable the Board to increase staff at every level in order to cut down on lengthy wait times that leave vulnerable workers in limbo and allocate more resources towards the comprehensive oversight of employment standards. This is necessary to ensure faster resolutions to disputes and more rigorous enforcement of labour laws.

Conclusion

Precarious, part-time, temporary, and low-wage jobs with limited benefits contribute to working poverty and impose high costs on society more broadly. The consequences are far reaching including chronic stress and health problems for workers to poorer school performance for their children and, fundamentally, lost human potential.

Too few private sector workers have meaningful access to the benefits of collective bargaining and our traditional model of union organizing one workplace at a time is a key culprit.

BC's Labour Relations Code has failed to keep up with the evolving nature of work and technology, which has hindered organizing efforts and left many particularly vulnerable workers without a path to collective bargaining. The recommendations outlined in this submission, including the adoption of broader-based (sectoral) bargaining frameworks, the removal of barriers to collective bargaining from the Code, and the enhancement of the LRB's capacity will ensure that the Code adapts to the realities of changing work environments and improve access to collective bargaining to hundreds of thousands of vulnerable workers, including women, racialized and Indigenous workers, migrant workers and low-wage workers.

March 20, 2024

Via email: lrcreview@gov.bc.ca

RE: British Columbia Labour Relations Code Review – Pension Plan Auto Enrollment

The CEIRP is seeking the inclusion of auto enrollment provisions in the British Columbia Labour Relations Code ("the Code"). Auto enrollment allows employers and plan administrators to enroll eligible employees into an available and mandatory workplace pension scheme without any formal application process or need for the employee to take any action in circumstances where the eligible employee fails to complete the required enrollment process.

The CEIRP is a group retirement savings plan servicing entertainment industry trade unions across Canada. The CEIRP is the savings and retirement plan for most International Alliance of Theatrical Stage Employees ("IATSE") locals, the Directors Guild of Canada ("DGC"), Entertainment Partners Canada, Actsafe Safety Association, and the British Columbia Council of Film Unions. The CEIRP has over 33,698 members across Canada and continues to grow.

The CEIRP provides entertainment industry workers a flexible mechanism to provide for retirement even where many in the industry will have several employers in their career. While the CEIRP began in 2004 with only a handful of members it now has assets of over one billion dollars.

The CEIRP is a champion for legislative changes that promote retirement savings and financial stability for workers upon retirement. It is documented that many employees do not join workplace pension plans as soon as they are eligible, and delay building their retirement savings to later in life.[1] These very simple decisions can have a significant impact on the financial well being of a worker and their ability to retire with financial stability.

[1]https://www.fsrao.ca/industry/pensions/regulatory-framework/guidance-pensions/guide-employers-communicating-value-your-pension-plan

Issues Background

In 2022, Statistics Canada reported that the national household savings rate was 5.4%, significantly down from 14.5% in 2020.[2] Contributions to registered retirement savings plans have grown meagrely in recent tax years. Statistics Canada has reported that in 2021, the number of tax filers who contributed to their RRSPs grew by .1% from the following year.[3]

Behavioural scientists have identified two potential reasons why individuals do not take action to enroll in group retirement plans, even ones that offer matching employer contributions.[4] The first is inertia, which is the failure to expend effort to achieve an outcome. By default, these individuals make a choice not to participate due to this inertia. The second is myopia, a short sightedness where individuals choose to spend money on short term desires instead of saving for long term goals such as retirement.[5] Auto enrollment is the solution to overcome the issues of both inertia and myopia.

The CEIRP submits that changes to the Code ought to include mandatory auto enrollment in pension plans and group Registered Retirement Savings Plans ("RRSPs").

Auto enrollment is the process where the employee is automatically enrolled in a pension plan or a group RRSP upon hire, providing the individual the opportunity to opt out instead of opt in. This feature supports a financially healthy workforce, one who is set up to achieve a financially sustainable retirement. Such a feature achieves these important societal goals without a cost to the provincial government. Auto enrollment instead lessens burdens from the province as it may have the effect of decreasing reliance on social public programs upon retirement due to an increase in financial stability.

The Legislative Landscape

The Code is the statute in British Columbia which governs employment relationships in the province and is the appropriate legislation to house a provision concerning auto enrollment.

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[2] https://www150.statcan.gc.ca/n1/daily-quotidien/231108/cg-b002-png-eng.htm
[3] https://www150.statcan.gc.ca/n1/daily-quotidien/230317/dq230317e-eng.htm
[4] https://www.benefitscanada.com/pensions/cap/do-employees-want-auto-features/
[5] https://www.benefitscanada.com/pensions/cap/do-employees-want-auto-features/

The legislative landscape in British Columbia does not currently allow for auto enrollment unless expressly provided for in a plan text or collective agreement. As such, prevailing legislation does not broadly permit auto enrollment.

The *Employment Standards Act, RSBC 1996,* prohibits an employer from deducting or withholding amounts from an employee's pay unless authorized by statute:

> **Deductions**
>
> 21 (1)Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly, or indirectly, withhold, deduct, or require payment of all or part of an employee's wages for any purpose.[6]

This is a broadly worded clause that prohibits deductions which would include pension contributions unless they are authorized by other statutes.

The *Pensions Benefits Standards Act, SBC 2012,* ("PBSA") confers upon employees the right to join a plan, it is conditional on the employee taking steps to enroll in the plan. Section 29(1) of the PBSA provides as follows:

Entitlement of employees to join plan

> 29 (1) Each employee in each class of employees for whom a pension plan is maintained is, **on application**, entitled to become a member of the plan…

The difficultly faced by entertainment industry employers and CEIRP is that eligible members fail to submit an application and complete the enrollment process.

While subsection 29(2) of the PBSA permits pension plans to stipulate that as part of the terms and conditions of an employee's employment, "the employee must be a member of the plan" it does not resolve the problem of employees not submitting their required information for enrollment and subsection 29(2) is discretionary.

> 29(2) Despite subsection (1), the plan text document of a pension plan **may provide** that, as part of the terms and conditions of an employee's employment,
>
> (a) the employee must be a member of the plan, or
>
> (b) the employee becomes a member of the plan if the employee

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[6] EMPLOYMENT STANDARDS ACT [RSBC 1996] CHAPTER 113 s. 21

(i) receives the prescribed notice, and

(ii) does not, within the prescribed period after receiving that notice, elect in the prescribed manner not to be a member.[7]

The Canada Revenue Association has issued guidance concerning mandatory participation in a group RRSP dictated by a collective bargaining agreement or an employment contract. The Directorate's position permits issuers administering group RRSPs to request registration of a contract without having the annuitant complete the application form, provided the issuer has obtained the minimum information required, which includes the annuitant's name, address, date of birth and social insurance number.

While this ruling is useful, it is not binding with respect to any party other than the organization that requested the CRA ruling and does not assist the vast majority of entertainment industry employees as the applicable collective agreements do not dictate participation in an available group RRSP or other pension plans. The only viable solution is to prescribe auto enrollment through legislative changes to the Code.

Cross-border Experiences

Auto enrollment has been a broad success in the United Kingdom (UK) and is increasing in popularity in the United States, which have both recognized declining plan participation as an issue that can be addressed through legislative intervention. These experiences serve as a practical model for British Columbia to consider.

Auto Enrollment in the UK

Pursuant to the *Pensions Act, 2008*,[8] an employer must automatically enroll an individual into a pension scheme if they are classified as a worker, between the age of 22 and state pension age, earn at least £10,000 per year, and ordinarily work in the UK.[9] The employer is required to provide notice to the individual that they have been automatically enrolled and provide information concerning the enrollment date, the type of pension scheme, the contributions, how to opt out, and how tax relief might apply. Workers may opt out of the pension scheme within 1 month of being auto enrolled, but the employer has a duty to re-enroll any eligible jobholders who have opted out every 3 years.

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[7] PENSION BENEFITS STANDARDS ACT [SBC 2012] CHAPTER 30 s. 29
[8] Pensions Act 2008, UK Public General Acts, 2008 c. 30
[9] https://www.gov.uk/workplace-pensions/joining-a-workplace-pension

The UK began phasing in auto enrollment in 2012, with large employers required to implement by 2014. Since February 1, 2018, auto enrollment is required by all employers in the UK, even those with one employee.

The statistics provide a clear measure of success for this legislative intervention. By 2013, the number of employees in a workplace pension plan increased to 50%.[10] By 2020, over 90% of eligible private sector workers were members of workplace pension scheme.[11] Before auto enrollment, just two out of five private sector employees were saving for a workplace pension. However, in 2019 that number rose to an impressive four out of five.[12]

Research published in the UK indicates that auto enrollment has had significant impact on some vulnerable population groups, including those who had historically low participation rates before auto enrollment.

Automatic enrollment has reduced the gaps in participation between population groups of employees. Before automatic enrollment, only 20% of eligible 22-25 year old participated in a pension, compared to 88% in 2020.[13] For individuals who are 51-55 years old participation has increased from 55% to 93%.[14] Another vulnerable group that has been positively impacted by this policy change are those with ongoing debt. Before auto enrollment, only 23% of those who were behind on bill payments saved in a workplace pension, which can be contrasted with 89% after automatic enrolment.[15]

The research indicates that legislative changes in the UK have overcome both inertia myopia among the workforce and have had positive outcomes on financial stability in retirement. We submit that similar positive outcomes can be expected if the Code is amended to include automatic enrollment features.

Auto Enrollment in the United States

Auto enrollment continues to grow in prevalence the United States as well. The prevalence of auto enrollment in defined contribution plans in the United States grew

[10] https://www.benefitscanada.com/pensions/cap/do-employees-want-auto-features/
[11] https://ifs.org.uk/articles/automatic-enrolment-too-successful-nudge-boost-pension-saving
[12] https://ifs.org.uk/articles/automatic-enrolment-too-successful-nudge-boost-pension-saving
[13] https://ifs.org.uk/publications/who-leaves-their-pension-after-being-automatically-enrolled
[14] https://ifs.org.uk/publications/who-leaves-their-pension-after-being-automatically-enrolled
[15] https://ifs.org.uk/publications/who-leaves-their-pension-after-being-automatically-enrolled

from 52% in 2009 to 73% in 2017.[16] Defined Contribution plans that adopt auto enrollment boast enrollment rates of 90% compared to 68% for plans that do not.[17]

In 2022, the United States Congress passed the Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act ("the Secure Act").[18]

Section 101 of the Secure Act requires employer with new 401)k) and 403(b) retirement plans created after December 29, 2022 to automatically enroll employees in the plan with a 3%-20% employee contribution rate and automatically increase contributions until it reaches a maximum of 10-15%. Employees are nudged into participation through auto enrollment and auto increase with an ability to opt out.

Previous legislation permitted automatic plan design features but did not make them mandatory. The Senate Committee's summary of the legislation discusses the issues the legislation seeks to address through mandatory auto enrollment:

> "One of the main reasons many Americans reach retirement age with little, or no savings is that too few workers are offered an opportunity to save for retirement through their employers. However, even for those employees who are offered a retirement plan at work, many do not participate."[19]

Auto enrollment features have been recognized as a solution to participation issues in pension plans. Positive implications will continue to be observed from this policy change if implemented.

Conclusions

We respectfully submit that the British Columbia Labour Code Review Panel should endorse and recommend the inclusion of auto enrollment in the Code. Canada falls behind many of our neighbours in addressing the issue of plan participation. British Columbia has an opportunity to be a provincial leader in enacting a low-cost solution which would significantly impact the retirement stability of workers in the province.

Saving adequate funds for retirement is not an easy endeavour, with many workers unsure of their financial opportunities and focused on short term goals. Auto enrollment

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[16]https://www.oba.org/Sections/Pensions-and-Benefits-Law/Articles/Articles-2018/October-2018/Automatic-Features-in-DC-Pension-Plans

[17]https://www.oba.org/Sections/Pensions-and-Benefits-Law/Articles/Articles-2018/October-2018/Automatic-Features-in-DC-Pension-Plans

[18] https://www.congress.gov/bill/117th-congress/house-bill/2617

[19]https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

promotes long term planning and the financial ability to retire. This feature has the collateral impacts of aiding employers in workforce planning and relieving burdens from public programs. The experience of the UK in mandating auto enrollment has resulted in significant increases in participation in pension plans, even in vulnerable populations. British Columbia will likely experience similar positive outcomes if it takes this innovative step forward and mandates auto enrollment.

In addition to these written submissions, the CEIRP is willing to meet with the Review Panel either in person or virtually to further discuss any of these important issues.

Yours truly,

Frank Haddad,

Chair, National Retirement Committee

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In business for your business

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CFIB Labour Relations Code Review submission

Panel members,

The Canadian Federation of Independent Business (CFIB) is a non-profit, non-partisan business association with 97,000 members across Canada and 9,500 in British Columbia. We are Canada's largest organization exclusively representing the interests of small and medium-sized businesses from a variety of industries. CFIB participated in the 2018 review and is pleased to share our member's perspective again for the 2024 Labour Relations Code ("the *Code*") review.

The following submission outlines CFIB's concerns regarding the compressed timeline of this review process as well as the lack of information on what amendments are being considered by the review Panel. Next, it provides an economic overview of BC and explains how rumoured *Code* changes would impact the provincial business landscape. Although there has been no confirmation regarding which sections of the *Code* the Panel will focus on, it is anticipated that organized labour stakeholders will advocate for the implementation of sectoral bargaining and the expansion of secondary picketing. The submission argues that implementing these measures would damage employment relations, hurt the business community, and diminish BC's competitiveness.

The submission also argues for the reinstatement of the secret ballot vote for union certification. This argument aligns with the Section 3 panel's 2018 recommendation to retain the secret ballot vote, which was disregarded by the BC government. Reverting to secret ballot voting is the only way to ensure workers are guaranteed the right to make their own voting choices without coercion or intimidation. Finally, the submission provides an overview of BC small businesses' pain points with the existing *Code* and shares suggestions for improvement.

Introduction

CFIB is frustrated and concerned about the rushed and disorganized consultation process for the 2024 *Code* review. As stated in the joint industry letter signed by CFIB and sent on February 21st, the initial timeline for stakeholders to submit input was insufficient for meaningful consultation and suggests a lack of interest in gathering feedback from the business community. The government had 5 years to prepare for this consultation and yet is scrambling to meet the basic requirements of this legislated review process. While we appreciate the extension that has since been granted to stakeholders and sincerely thank the Panel for acting on this feedback, proper consultation with the business community should have been built into this review plan from the beginning.

Furthermore, this consultation provides no details on what elements of the *Code* are being focused on or what proposals are being considered. This lack of clarity makes it challenging for stakeholders like CFIB to provide a

relevant and data-driven perspective on behalf of small business owners. Though our organization has the capacity to directly survey 9,500 small business owners for feedback on the *Code*, the review's abbreviated consultation timeframe hindered our ability to do so. Unfortunately, these challenges mirror a pattern of flawed consultation that small business owners have repeatedly observed from the current BC government.Not only is there little information about which proposals the review Panel is considering, it was concerning to discover that Bill 9 - the *Miscellaneous Statutes Amendment Act* - has been introduced externally from this review process to avoid proper consultation. This amendment would allow secondary picketing to impact neutral third parties. This change overlooks the need for balance and contradicts the duty to minimize the effects of labour disputes on those not directly involved. There is no justification for excluding this important deliberation from the ongoing review process, and such a blatant sidestep of due process undermines the review's credibility and its legitimacy.

It should also be noted that almost all (91%) of BC small businesses are not confident the government has a vision that supports their growth. The government's inadequate consultation of the *Code* review will further exacerbate the perception that the provincial government is not listening to the perspectives and challenges of business owners. In addition, 88% of BC small businesses say it should be a priority for the government to ensure labour policies are reasonable for employers, which is stronger response than anywhere else in the country. Small businesses are rightly concerned that this review process will not prioritize balance or address their priorities adequately.

Past amendments to the *Code* in 2019 and 2022 have heavily favoured the asks of organized labour stakeholders. Specifically, the 2019 amendments introduced provisions that pose challenges for employers like significantly reducing the time for scheduling certification representation votes and expanding remedial certification provisions. Additionally, the removal of the secret ballot in 2022, and returning to card-based certification continued this trend of favouring organized labour and diminishing employers' interests.

When the government disproportionately favours one side of employment relations, there's a strong incentive for new governments to swing the pendulum back the other way. These dramatic shifts bring instability and uncertainty for workers and businesses. Plus, when the review Panel does not strive towards mutually desirable outcomes, it undermines collective faith in the integrity of this consultation process.

Considering the government has provided few details about what proposed changes are being considered for the *Code*, the following submission focuses on the economic implications of rumoured changes regarding sectoral bargaining and secondary picketing, the importance of re-introducing secret ballot measures, and addresses specific *Code* irritants that impact small businesses in the province.

We strongly recommend that the Labour Code Review Panel advises the BC government against implementing sectoral bargaining and removing restrictions on secondary picketing. In addition, we recommend reintroducing secret ballots in alignment with the P**anel's** 2018 recommendation. Doing so will ensure workers' rights are protected while creating an environment for small businesses to thrive, create **jobs, and contribute to the province's prosperity**.

BC's economic competitiveness

BC small businesses are operating in a difficult economic environment, as the province grapples with sluggish economic growth, dwindling business investment, large deficits, and stringent labour regulations. The 2024 budget did little to assure businesses the economy will rebound, with promises of record-high spending, ballooning debt, and declining GDP per capita. This year, the government anticipates a $7.9 billion deficit, and the projected debt-to-GDP ratio is set to soar from 17.6% in the previous fiscal year to a whopping 27.5% by 2026/27. BC's economy is projected to grow even slower than the government expected this year, with real GDP projected to increase by only 0.5% in 2024. On top of this, GDP per person is expected to fall from $60,277 in 2022 to $57,929 in 2024.

Ballooning debt and escalating deficits pose a significant threat to much-needed private investment. Public debt crowds out private investment by raising interest rates and making borrowing more expensive for businesses and individuals, thereby reducing their incentive to invest. Additionally, extensive government borrowing absorbs available funds in financial markets, limiting resources for private investment projects and hindering economic growth. Without adequate private investment, the province will struggle to generate the necessary momentum for economic activity and enhanced competitiveness on the global stage.

Additionally, the burden of these large deficits inevitably falls upon businesses in the form of increased taxes in the future. As the government grapples with the financial fallout of substantial deficits, businesses are likely to face higher tax obligations to compensate for the shortfall. This further exacerbates the economic challenges faced by small businesses, hindering their capacity to invest, expand, and innovate in an already challenging economic climate.

These tight economic conditions will only worsen with the implementation of the government's CleanBC policy agenda. According to the government's own modelling, their plan to reduce BC's emissions will push the province's economic growth down to the slowest pace on record and substantially dampen economic prosperity. By 2030, these policies will shrink the economy by an estimated $28 billion. On top of these broader consequences, small businesses will be forced to shoulder the high costs of installing new equipment, disrupt their operations for installations, and adapt their business models to comply with the swiftly changing regulations.

In light of these unforgiving economic conditions, it's no surprise that small business owners feel uneasy about the future. CFIB's monthly Business Barometer tracks the short-term (3 months) and long-term (12 months) confidence of small business owners. Right now, BC businesses short term optimism is dismally low, sitting at only 40 points – 15 points below their historic average. Their long-term outlook isn't much better, with their optimism sitting at 50 points – 13 points below their historic average.

Based on our Barometer results, small business owners indicate that taxes and payroll costs are their primary cost constraints. Notably, British Columbia has the second highest payroll costs in Canada, trailing only Quebec, which has its own pension system. Factors contributing to BC's high payroll costs include mandatory employer-paid sick days (the only one in the country), higher WorkSafeBC premiums, and Canada's highest minimum wage ($17.40/hour). At the same time, they're juggling the country's highest fuel taxes and a carbon tax without a clear plan for revenue recycling into the economy. Additionally, BC has one of the lowest exemption thresholds for provincial payroll taxes, making it challenging for businesses to invest in the province.

The imposition of stringent labour regulations without corresponding measures to enhance productivity or support businesses in absorbing these costs could have adverse effects on job creation and economic growth. Without adequate support mechanisms, businesses may be forced to reduce their workforce or scale back investment in innovation and expansion, further stifling BC's economic potential. Recent CFIB survey data shows that 7 in 10 BC small businesses want the government to prioritize ensuring labour policies are reasonable for employees. Introducing more stringent labour regulations will significantly increase the cost of labour and hinder the province's competitiveness by deterring new businesses from establishing themselves in BC and pushing existing businesses to consider relocating to provinces with more favourable regulatory environments.

Overall, while the intention behind stricter labour regulations may be to protect workers and ensure fair labour practices, the unintended consequence of increased costs could have detrimental effects on BC's competitiveness, job market, and economy.

Sectoral bargaining

CFIB anticipates that stakeholders from organized labour will advocate for amendments that would allow sectoral bargaining in specific sectors. Not only would this impose a range of challenges on small businesses, but it would also make BC a Canadian outlier, as only Quebec has any form of private-sector sectoral certification (beyond the construction sector, because of its "decree" system). This decree system predates Quebec's existing labour legislation and has substantially declined in significance and scope over the past three decades.

Permitting sectoral bargaining would have significant impact on BC small businesses and there is no precedence for managing these impacts. First, small businesses operate on tighter profit margins than larger companies. Industry-wide agreements to increase wages or adjust working conditions would significantly raise their operational costs, which are more difficult for small businesses to absorb. BC already has the second highest payroll costs in the country, and these changes would widen that gap even further for specific industries. Ultimately, the high costs of implementing sectoral bargaining would put BC small businesses operating under sectoral bargaining agreements at a competitive disadvantage.

High costs aren't the only burden small businesses would have trouble keeping up with; the administrative requirements for sectoral agreements would impose paperwork on small businesses that they simply do not have enough resources to manage. Unlike big businesses, many small businesses don't have their own HR department or administrative staff to manage these requirements efficiently. The added time and stress of more paperwork is the last thing that struggling small business owners need on their plates.

Sectoral bargaining could also jeopardize flexible employment arrangements that many small businesses rely on. Agreements to standardize conditions such as working hours or overtime rates would limit their ability to adapt quickly to changing market conditions. Many employees also value this flexibility, and don't want to be constrained by standard working hours. Businesses don't have "one size fits all" solutions and sectoral bargaining would force small businesses to conform to employment standards that don't make sense for their employees or business models.

Finally, we worry that sectoral bargaining agreements would overshadow the needs of small businesses with the priorities of larger firms. The disproportionate negotiating power of big businesses could result in decisions that don't fully reflect the realities and financial constraints of small businesses. This model fails to accurately capture the diverse needs of the business community and forces conformity to a system that does not serve small businesses or their employees.

In sum, we strongly recommend that the Labour Code Review Panel advises the BC government against introducing any form of sectoral bargaining or sectoral certification, as this measure will raise operating costs for businesses, increase regulatory burdens for small businesses, jeopardize flexible work arrangements, and overshadow the needs of small businesses with the priorities of larger firms.

Secondary picketing

We are concerned to hear rumours that the Panel is considering eliminating current secondary picketing restrictions in the *Code*. While CFIB recognizes the importance of the right to strike, secondary picketing has harmful, unfair consequences for BC's business community and the economy. Secondary site picketing is a tactic where striking workers picket at a location other than their own workplace, which is often a third-party business that may or may not be connected to the employer involved in the dispute. These third-party businesses endure unwarranted reputational damage, disruptions to their regular operations, and financial fallout due to secondary picketing disruptions. They also may need to spend more on increased security and shoulder red tape burdens to ensure their actions are legally compliant. This tactic is incredibly unfair to these third-party businesses that are not at fault yet are forced to suffer consequences. Why would the *Code* allow workers to punish uninvolved small businesses that have done no wrong?

Secondary picketing also increases the economic impacts of strikes. Small businesses rely on the goods and services of other businesses, and if a supplier is being picketed, this can drastically disrupt supply chains. Supply chain disruptions lead to delays, shortages, and higher costs for small businesses that ultimately translate to higher costs for consumers. Once a strike ends, it doesn't guarantee business will resume as usual; the practice of secondary picketing can strain or damage the relationship between the primary employer and the affected third-party business. It can also affect relationships with customers, suppliers, investors, and other stakeholders, potentially leading to long-term damage to business relations and local economies.

As previously noted, the *Code* amendment, Bill 9, will allow for an expansion of secondary picketing and specifically for picketing to impact uninvolved businesses. The amendment means federal pickets can now effectively shut down provincial employers and that provincial employers will have no recourse to address the impact of the federal picket line. This change is being made without consideration for balance in employment relations or the fact that this amendment is inconsistent with the Section 2 duty that requires the Board to apply the *Code* in a way that "minimizes the effects of labour disputes on persons who are not involved in those disputes." Ultimately, provincial employers should not face the challenges of secondary picketing or risk being shut down by an unrelated federal labour dispute.

BC residents and businesses have already felt the wide-scale impacts of major labour strikes during the 13-day Vancouver Port Strike this past summer. The Greater Vancouver Board of Trade's Port Shutdown Calculator estimated that the value of trade disrupted over the course of the strike was $10,684,046,296. Of course, this

massive figure does not account for the reputational damage done on a national level to Canada's reliability as a trading partner. Businesses across BC and the rest of the country struggled with supply-chain impacts and lost revenue from delayed inventory, while residents struggled to acquire essential products like medication and baby formula. The massive repercussions of this strike live in the recent memory of Canadians and serve as a reminder to ensure that, when possible, strike activities do not escalate to a point of economic and social harm.

In summary, removing restrictions on secondary picketing in the *Code* will harm businesses and consumers while providing little benefit to employment relations. We strongly recommend that the Labour Code Review Panel advises the BC government against lifting restrictions on secondary picketing because it will unfairly burden uninvolved third parties, broaden the devastating economic impacts of strikes, and further undermine BC's reliability as a trading partner.

Secret ballot and card check

In 2022, the BC government removed mandatory secret ballot votes in favour of card-based certification. The government moved forward with this consequential decision despite the 2018 Labour Code Review Panel report's recommendation that secret ballot be retained. We are frustrated by the government's disregard for the Panel's guidance on navigating this complex issue, especially without further consultation with stakeholders on the matter. Unfortunately, the government's ongoing pattern of significantly changing labour regulations without considering the consequences to the business community has caused much frustration for our members.

The card-based certification system fails to ensure signatories are reaching their own decisions free of persuasion, coercion, or misinformation. Employees are entitled to make their own choices about whether they want to unionize, but removing privacy from this process puts them in uncomfortable, unfair positions that will impact their self-determination. Instead of having the freedom to express their wishes anonymously, employees are forced to make important decisions under the eyes of their employers and coworkers. This opens the door for peer pressure and fear of retaliation from colleagues or employers based on their decision and stirs tension and strife in the work environment.

The only way to ascertain that worker's autonomy is respected is through the secret ballot vote. This method of voting allows employees to freely express their wishes anonymously, without fear or pressure. Guaranteeing the freedom to associate and *not* to associate is fundamental to our democracy. The secret ballot vote is the best system for ensuring employees comfortably navigate a union selection process.

It is worth noting that secret ballot measures served as a crucial counterbalance to anti-replacement worker measures, acting as a safeguard for individual freedom and autonomy in labour decisions. In essence, secret ballot measures acted as a stabilizing force, allowing for a more equitable and transparent negotiation process between employers and employees. When secret ballot measures were removed, it not only disrupted the balance in employment relations but also compromised the integrity and effectiveness of collective bargaining.

We strongly recommend that the Labour Code Review Panel advises the BC government to re-introduce the secret ballot vote for union certification as this is the only mechanism to guarantee that employees

make their own choice without coercion or intimidation. Protecting this right is essential for upholding our democracy and **workers'** employment rights.

Small business challenges with the current Labour Code

In light of the many challenges facing BC small businesses, new updates to the Labour Code Review should prioritize fairness and alleviate unnecessary burdens for employers. Our members point to three specific elements of BC's existing *Labour Code* as their primary pain points, and suggest common-sense changes that would significantly alleviate unnecessary costs and red tape burdens:

1. We have heard many reports of employees handing in their resignation only to immediately use their remaining sick days as though these are paid vacation days, rather than complete their final week of work. This predicament is stressful and costly for small businesses, who must continue to pay the employee while searching for a replacement on short notice. Since business owners cannot confirm whether the employee is legitimately sick, this legislation allows employees to take advantage of employers when they resign.

2. Align resignation legislation with termination legislation, enforcing a set amount of resignation notice for employees. This requirement ensures employers aren't left scrambling to replace workers and limits negative impact on their business operations. Establishing a reasonable notice period also improves predictability for employees in their transition process.

3. Consider job abandonment legislation wherein if an employee is absent for 5 or more consecutive days without communicating the reason to the employer, the employer may consider the position abandoned, and therefore the employee has resigned. This should also apply to if an absence period was declined when requested by the employee, but the employee decides to take the time anyways. Establishing a mutually understood protocol for these situations reduces ambiguity for both employers and employees on how to proceed in the event an employee fails to communicate an extended absence.

Conclusion

Introducing any form of sectoral bargaining or sectoral certification will raise operating costs for businesses, increase regulatory burdens for small businesses, jeopardize flexible work arrangements, and overshadow the needs of small businesses with the priorities of larger firms.

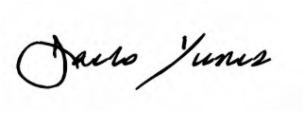
Removing restrictions on secondary picketing will negatively impact businesses and consumers while providing little benefit to employment relations. This change would unfairly burden uninvolved businesses, broaden the devastating economic impacts of strikes, and further undermine BC's reliability as a trading partner.

In sum, CFIB strongly recommends that the Panel refrains from recommending the implementation of sectoral bargaining and the lifting of picketing restrictions. Small businesses would like to see the Panel take a balanced approach to employment relations given that implementing these Code amendments would undoubtedly swing the pendulum too far in favour of organized labour. In addition, we encourage the Panel to recommend re-introducing the secret ballot vote to protect our democracy and worker's employment freedoms.

Finally, CFIB appreciates the opportunity to share small businesses concerns and recommendations for how to improve BC's Code. We are requesting a second round of consultation once the proposed changes are **shared, so that the business community has an opportunity to provide feedback once there's more clarity** on what changes to the Code are being considered. CFIB's BC Senior Policy Analyst Emily Boston will attend

the in-person consultation session on April 5th to share more from the perspective of small business owners about potential changes and our recommendations.

Sincerely,



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March 18, 2024

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Labour Relations Code Review Panel
Ministry of Labour
Government of British Columbia

Attention: Sandra Banister, K.C., Michael Fleming, Lindsie Thomson
VIA EMAIL: lrcreview@gov.bc.ca

RE: British Columbia Ministry of Labour Review of British Columbia Labour Relations Code

Dear Sir/Madam:

The Canadian Franchise Association (CFA) welcomes the opportunity to provide written submissions for the Ministry of Labour's (the "Ministry") 2024 independent review of the *British Columbia Labour Relations Code* (the "Code"). As the Ministry works to review the Code, the CFA asks it to consider the impact any potential change may have on franchisors and franchisees across British Columbia.

Franchising is a unique licensing model that allows everyday Canadians interested in starting their own business the opportunity to do so with the support of an existing franchise system. Many franchise brands that are recognized in British Columbia, across Canada, and throughout the world are owned and operated by franchisees who live and work in their local communities. Local franchise business owners are in business for themselves, but not by themselves.

By buying a franchise, the local franchisee gains access to a proven business concept, brand, and processes while running their own small business. In addition, the franchisor provides the franchisee with ongoing support and assistance to ensure the long-term success of the franchise, which leads to the long-term success of the franchise system as a whole. The strength of the franchise model lies in this foundational franchisor-franchisee relationship.

In 2024, it is projected that there will be 9,961 franchise establishments[1] in British Columbia, employing 257,300 British Columbians[2] and contributing an estimated $18.1 billion to the provincial GDP[3]. Franchised businesses in British Columbia will also contribute an estimated $4.18 billion in federal and provincial tax revenue in 2024.[4]

The CFA's primary submission is that the Ministry should adopt a four-factor test for determining whether a common employer relationship exists between a franchisor and a franchisee. Within the franchising context, a common employer declaration should be reserved for cases where the franchisor exercises control over labour relations matters involving the franchisee's employees, and more specifically with respect to where the franchisor:

1. Hires or terminates the employee;
2. Directly Supervises and controls the employee's work schedule or conditions of employment;
3. Determines the employee's rate and method of payment; and
4. Maintains the employee's employment records.

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[1] *Canadian Franchise Industry Economic Outlook 2024 at p 8 Table 2*
[2] *Ibid, Table 8.*
[3] *Ibid.*
[4] *Ibid, Table 3.*

It is only when a franchisor, in fact, exercises control over these specific matters that it is appropriate to treat it as an employer for labour relations purposes.

Further, the CFA submits that the four-factor common employer test would help bring the Code in line with other legislation in British Columbia and recently amended federal legislation in recognizing the "arm's length" relationship between a franchisor and franchisee.

The Common Employer Test

The purpose of the common employer declaration in the current labour relations context is to ensure that existing certification and collective bargaining rights are preserved. The CFA suggests that:

- the proposed four-factor test will preserve existing certifications and bargaining rights by ensuring that the actual employer of the employees (the franchisee) is at the bargaining table, and

- No labour relations purpose would be served by treating the franchisor as an employer in the circumstances where the franchisor has no involvement or control over matters that form the basis of the employment relationship.

The Proposed Common Employer Test for Employers in the Franchise Industry

The CFA recommends the Ministry adopt a clear test to determine who is the employer as between a franchisee and a franchisor. This clarity will assist both employees and employers by bringing certainty to the determination of who the employer is in a franchise relationship. In general, it is the franchisee, not the franchisor, who carries the hallmarks of the employment relationship.

Franchising is a contractual business relationship whereby the franchisor allows an independent business owner (the franchisee) to use the franchisor's branding, business model, method of operation and other intellectual property. In return, the franchisee typically agrees to pay an upfront franchise fee, plus ongoing royalties to the franchisor.

The most common type of franchise arrangement is the business format franchise. In this model, the franchisor allows the franchisee to do business using their trademarks and business model in exchange for certain fees (typically a recurring percentage of sales revenue). Franchises under this model are operated according to the franchisor's standards of operating procedures, guidelines, and rules.

Employment and labour law can penalize franchisors for establishing control mechanisms to protect their intellectual property and for enforcing system standards that protect the brand to ensure that products and services within the franchise system meet customers' expectations everywhere. The law can be interpreted as such that franchisors create an employment relationship with the franchisee and the franchisee's employees by exercising control over the use of the franchisor's trademarks and intellectual property.

There needs to be clarity in employment and labour law on this issue so that franchisors can protect the intellectual property of their brand while at the same time protecting the role of franchisees as independent business owners. The law should be clear that while franchisees follow a franchisor's systems and guidance and leverage its ongoing support, they remain the independent owners of the franchised business and employers of their staff. While a franchise agreement requires that a franchisee

follow brand guidelines and standards, the franchisee remains in control of the business within the parameters of the franchise agreement.

While a franchisor requires its franchisees to meet system standards to maintain consistency in products, services and customer experience across the franchise system, this control does not extend to determining the essential terms and conditions of the employment relationship between a franchisee and its employees.

Franchising is a unique licensing model that allows individuals interested in starting their own business the opportunity to do so with support by an existing franchise system. Much of the success of the franchisor and franchisee relies on the system standards set out above and the preservation of the franchisor's "brand." Franchisees invest in, own, and operate their business "for themselves, but not by themselves", as they operate under the rules prescribed by the franchisor's "system".

In light of the above, the CFA proposes that the current common employer test does not properly take into account the unique characteristics of the franchise business model and therefore should not be applied in the franchising context. Instead, the CFA submits that the following four-factor test should be used for determining whether a franchisor is an employer of a franchisee's employee:

Does the franchisor:

1. **Hire or terminate the employee;**
2. **Directly supervise and control the employee's work schedule or conditions of employment;**
3. **Determine the employee's rate and method of payment; and**
4. **Maintain the employee's employment records.**

A franchisor who **<u>does not</u>** do these things should not be considered the employer of the franchisee's employee. Put differently, if a franchisor does not exercise meaningful control over the matters listed above, then it makes no sense for the franchisor to be considered an employer for the purpose of labour relations.

Previous Applications of the Four-Factor Test

This type of framework is not unique. There are many jurisdictions in the United States that have enacted similar frameworks to clarify that a franchisee is not an employee of the franchisor, and a franchisee's employees are not employees of the franchisor.

The process for clarifying the standard began in 2015 in Louisiana, Texas, and Tennessee. In 2016, six states enacted similar language, nine more states enacted such laws in 2017, and one more state did the same in 2018. The states are as follows:

Alabama	(2017)	North Carolina	(2017)
Arizona	(2017)	North Dakota	(2017)
Arkansas	(2017)	Oklahoma	(2016)
Georgia	(2016)	South Dakota	(2017)
Idaho	(2018)	Tennessee	(2015)
Indiana	(2016)	Texas	(2015)
Kentucky	(2017)	Utah	(2016)

Louisiana	(2015)	Wisconsin	(2016)
Michigan[5]	(2016)	Wyoming	(2017)
New Hampshire	(2017)		

An amendment ensures that a franchisor can act in the best interest of protecting their brand and trademark without the risk of being found to be a common/related employer. It will bring much needed clarity to franchising in British Columbia and allow for continued growth, job creation and new franchise systems to enter British Columbia.

The CFA further calls on the Ministry to protect the franchisor-franchisee relationship by changing the definition of employee to specifically exclude franchisees from the definition of employee, to recognize that a franchisee is not the employee of their franchisor. The legislation should reflect the reality that being a franchisee is about being in business for yourself, although not by yourself.

Amendments to Recent Legislation

The CFA submits that the four-part test is consistent with legislation already enacted in British Columbia as well as recently amended federal legislation that recognizes the 'arm's length' relationship between certain contracting parties, including franchisors and franchisees.

British Columbia Franchising Act

In 2017, the Ministry passed the *Franchises Act* in British Columbia.[6] The Ministry passed the Act to take pro-active steps to protect the interests of franchisees in their relationship with franchisors. Specifically, the Act increased transparency by requiring franchisors to disclose important information about the company's legal, financial and bankruptcy history. Further, the Act:

- requires that pre-sale disclosure information be provided prior to the franchise agreement being entered into or money paid by the franchisee;
- provides legal rights and protections to help parties resolve legal disputes;
- allows franchisees to cancel the franchise agreement and be put back in the same financial position as if they had never entered the franchise agreement if the disclosure document was not provided; and
- provides franchisees with the ability to sue for damages in court in cases where the franchisor breaches its statutory obligations, including failure to provide the franchisee with the required disclosure information.

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[5] *For instance, and as an alternative, the Michigan Worker's Disability Compensation Act of 1969 now provides as follows:*
418.120 Employee of franchisee as employee of franchisor. Sec. 120.
An employee of a franchisee is not an employee of the franchisor for purposes of this act unless both of the following apply:
(a) The franchisee and franchisor share in the determination of or codetermine the matters governing the essential terms and conditions of the employee's employment.
(b) The franchisee and franchisor both directly and immediately control matters relating to the employment relationship, such as hiring, firing, discipline, supervision, and direction.

[6] *Franchises Act, SBC 2015, C 35.*

In short, the Act outlines statutory remedies for a franchisee to protect their interests as a small business owner. By providing these additional remedies specifically to a franchisee, the Act further emphasized the 'arms-length' relationship between a franchisor and a franchisee.

Federal Legislation

Last year, the federal government enacted amendments to the *Competition Act,*[7] to prevent poaching and wage fixing between unaffiliated employers. Franchisees and franchisors are typically considered unaffiliated, as the relationship is limited to contractual support from the franchisor. The federal government's amendments take into account the particular nature of the franchisor-franchisee relationship.

Section 45.1 of the *Competition Act* was intended to protect competition in the labour market through the introduction of new criminal sanctions. These include:

- **No - Poaching**: Prohibition on all two-way non-solicitation agreements and "side agreements" or two-way non-solicitation clauses in agreements between unaffiliated employers; and
- **Wage - Fixing**: Penalties where an unaffiliated employer agrees to fix, maintain, decrease or control salaries, wages or terms and conditions of employment which include the responsibilities, benefits and policies associated with a job.

Franchisors will typically impose standards and requirements that a franchisee must adhere to (and in turn so must the franchisees employees), either under a franchise agreement or through operation manuals and directives.

These amendments work to reinforce the role of the franchisee as an independent small business owner. The four-factor test submitted above aligns with this very purpose. Both the four-factor test and the recent amendments maintain that, in a typical franchise agreement, it is the franchisee who exercises direct control over the terms and conditions of employment and therefore is recognized as the employer.

Conversely, the current common employer test in the franchising context would only diminish the franchisee's role as an independent small business owner and create ambiguity in the labour relations context.

Conclusion

The franchise business model affords everyday Canadians the opportunity to own their own small business. By buying a franchise, the local franchisee gains access to a proven business concept, brand, and processes while running their own small business. Additionally, the franchisor provides the franchisee with ongoing support and assistance to ensure the long-term success of the franchise, which leads to the long-term success of the franchise system as a whole. The franchisor-franchisee relationship is the strength of the franchise business model.

Local franchisees live and work in communities across British Columbia. They create local jobs and give back to the communities that they serve.

The CFA submits that the current common employer test fails to properly take into account the unique characteristics of the franchise business model and should not be applied in this context. Instead, the

[7] *RSC 1985, C-34.*

Ministry should adopt the four-factor test for determining whether a common employer relationship exists between a franchisor and franchisee.

The adoption of the four-factor test is consistent with recent legislative amendments that reinforced the 'arm's length' relationship between a franchisor and franchisee. It would also reinforce the role of the local franchisee as an independent small business owner and the employer to their employees.

As the representative of franchising in Canada for more than fifty years, the CFA works with governments across Canada on issues that affect the franchise industry and small businesses. The CFA would welcome the opportunity to work with the Ministry to adopt the four-factor test. As an organization, the CFA boasts some of Canada's most experienced franchise lawyers, including those who represent mostly franchisors, those who represent mostly franchisees, and those who represent both.

Please do not hesitate to contact the CFA to discuss this submission.

Sincerely,

Sherry McNeil
President and Chief Executive Officer
Canadian Franchise Association

Background on the CFA

The Canadian Franchise Association (CFA) is the national, not-for-profit association of more than 600 corporate members representing over 40,000 franchise small business owners of more than 66,000 franchise establishments.

The CFA is the voice of the franchise community and the recognized authority on franchising in Canada. The CFA speaks for an industry that touches the lives of every Canadian in every community across the country.

Canadian franchises contribute more than $120 billion per year to the Canadian economy and create jobs for more than 1.7 million Canadians. They enable 78,000 Canadians to be their own boss as the owner of their own small business franchise location, serving their neighbours in communities from coast to coast to coast. These enterprises contribute over $15.9 billion in federal taxation revenue and pay nearly $62 billion in wages each year.

CFA members represent a diverse cross-section of businesses and over 60 sectors in Canada. Our members range from very large, established franchise systems, to smaller or emerging franchise brands. Members share the conviction that their commitment to excellence improves franchising for everyone involved, including franchisors, franchisees, suppliers, and customers.

In British Columbia, it is projected that there will be more than 9,960 franchise establishments in 2024, which will contribute $18.07 billion to the nominal GDP[8] of the province and create 257,300 jobs.[9] British Columbian franchises will contribute an estimated $1.79 billion in provincial taxation each year.[10]

[8] *Supra note 1, Table 2.*
[9] *Ibid, Table 8.*
[10] *Ibid. Table 13.*

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Canadian LabourWatch Association

Submission to: Section 3 Labour Relations Code Review Panel

March 22, 2024

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BC 2024 Labour *Code* Review Submission

What About the Least Powerful and Influential: BC Employees?

Introduction

The not-for-profit Canadian LabourWatch Association was first proposed in 1998 by the late Peter M. Archibald, a highly regarded legend in the annals of the history of labour law in BC.

Since November 2000 LabourWatch has interacted with thousands of unionized and union-free employees about their questions, aspirations and concerns regarding unionization.

LabourWatch's key mandate is to operate a website about unionization providing free access for employees looking for information, in particular access to applicable Labour Board forms accompanied by LabourWatch drafted instructions for certain employee centric labour board rights across Canada.

During that earlier era of the internet, some jurisdictions in Canada had no website for their Labour Board. While some Boards did have a website, and some had forms related to certain statutory (and arguably) *Charter* rights of employees, almost no jurisdiction had any other information, let alone instructions, for employees to refer to when dealing with their rights and responsibilities regulated by the relevant statute, regulations, Board rules, policies, etc.

LabourWatch developed and maintains instructions for certain employee rights based on the legislation, regulations, Board rules and case law. Where Board's provide no Forms to support the legislation, regulations, Board rules and case law, LabourWatch developed those. All of this online resource is supported by a toll-free number and an email address.

The most powerful parties of labour law in BC, and across Canada, are:

- The Members of the Labour Bar
- Unions and union leaders
- Employers
- Arbitrators
- Mediators
- The employees and adjudicators (Vice Chairs, Associate Chairs, Chairs, etc) of Labour Boards
- Elected Members of legislatures
- Relevant employees of the relevant Ministry (whatever its specific name is at any given time)

While there are many reasons this reality is inescapable, it remains possible and of importance that there be relevant changes.

<u>Unionized employees as well as employees affected by a union drive and/or Application to unionize them are among the most affected and least powerful. They simply do not have the same funds nor access to expert legal representation</u>.

Respectfully, it is not intellectually accurate to ever say that union leaders are the voice of workers in the public policy arena. Unions consistently advocate for legislation, rules, and case law that is sometimes diametrically opposed to the interests of both union-free and unionized employees. The next Section of our submission is but one of several possible examples of the problem employees face when they are simply not present in the backrooms and front porches of public policymaking.

Our Submission makes recommendations in 6 areas:

1. Undemocratic Card-Based Unionization, Unfair Lack of Card-Based Decertification

It is statistically probable that no jurisdiction has swung more often that BC between card-based and vote-based unionization than BC. It appears the first signs of democracy for unionization was the vote-based scheme implemented in 1977 in Nova Scotia. It has spread to some extent since then, and swung back in forth in a limited number of jurisdictions.

That BC also appears to have never had card-based decertification at any time is the most salient example of the fundamental bias in BC against the rights of the least powerful – BC's working people.

While union leaders appear to consistently advocate for the removal of the democratic secret ballot vote, LabourWatch is unaware of any instance of union's advocating for card-based union decertification. Internally, unions largely operate with secret ballot votes yet oppose them for unionization. This is a signature example of a union not being a credible voice for all aspects of employee rights and interests in the public policy arena.

BC does not operate on the basis of people collecting cards from eligible BC voters, in secret, in order to decide which person will be the MLA that will represent each riding, nor which political party will govern the Province. Unionization, ratification, strike votes should all be run properly and on a secret ballot basis just like Provincial and Municipal elections in BC.

Unions do in fact, and are allowed at law, to organize in secret to get enough cards to unionize without a vote. Further, case law allows them to mislead employees to get signatures. Therefore, during the process it is historically true that some employees end up unionized without every having had a chance to be informed and to openly discuss this employee to employee.

Respectfully, it is not intellectually viable to say that a scheme that allows this can ever achieve unionization as articulated in the *Code*:

2c) "encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees"

'Freely chosen' has been repeated in various forms in BC case law and across Canada. Respectfully, this is a shibboleth, a *legal* fiction. Card-based unionization denies an employee's 2B *Charter* Freedom of Expression. Supreme Court of Canda jurisprudence has held

that 2B is not just about getting to speak or act, but is inclusive of the right to hear, to have information – to be able to make an informed decision. Secret organizing defies this entirely.

The BC *Code* and case law allows secret card-based unionization, inclusive of deception. The case law requires such deception to meet a case law created, or common law standard of coercion in order to be an unfair labour practice. The case law essentially allows a worker to be told sign a card to get information or that there will be a vote (and/or other untruths) – but does not require that the signer be clearly told that they can be unionized without a vote, that they may have to becoming e and remain a union Member in good standing to get and/or keep their job, to have to pay union dues to keep their job.

All of the above 2 paragraphs also amount to violations of an employee's 2D *Charter* right of non-association.

NOTE: Quebec appears in Canada to be the only jurisdiction with card-based decertification on the same numerical terms as unionization – '50% plus 1'. However, unlike union's that can apply for a vote in Quebec between 35% and 50% 'union cards', there is no such option for employees.

LabourWatch Recommendation

Amend the *Code* to return to the secret ballot vote.

In the alternative, if this violation of fundamental democracy and the *Charter* is to be continued, then enable employees to apply for union decertification as follows:

- From 45% to 55%-1 – a vote on same terms as unionization votes.
- At 55% and above – card-based decertification.

This is the only way for the *Code* to in fact be truly fair and balanced, and to serve the least powerful and most affected people in BC: the employees.

Further, amend the relevant speech provisions to put an end to the ability of unions to deceive employees with a clearly relevant, prescriptive re-definition of what constitutes coercion. A union card is a contract. Beginning in 2014 the Supreme Court began, and in recent years has continued, to develop a duty of good faith honesty in contracting, inclusive of consequences for the withholding of material information – particularly by the more powerful party to the contract – which, in the issues at hand, are BC's unions.

2. Government Assistance for Employees

Across Canada, including in BC, there are multiple statutes and related bodies of case law, as well as government entities, that impact the employment of workers, in addition to labour law. For example: health and safety, human rights, employment standards, worker's compensation, privacy.

In BC, some, have taxpayer funded government employees and resources that help tax paying employees get different levels of assistance with their questions and needs, sometimes inclusive

of actual active assistance. For example, Employment Standards can require an employer to do certain things; to produce certain things.

There is no truly similar level of assistance for employees under the *Code*.

Multiple times LabourWatch has called Labour Boards across Canada, including the BC Board, to ask questions that employees ask us. We have shared with Board Chairs and Ministers the diametrically different levels of service or answers received when we were seeking unionization versus seeking to remain or become union-free.

In brief: when seeking help to find the right relevant union we were given a specific union name or directed to a Board maintained list of unions. However, when asking about being union-free we were advised with variations of: 'oh I cannot answer that or help with that'. When asked why, we have received answers: 'oh the unions would go crazy if they found out we gave an answer', or 'we are a neutral body' (that saw itself as able to help find a more relevant union for an employee, but were silent about getting out or keeping one out aside from advising us as a caller to 'get a lawyer').

Employees pay taxes. Almost all unionized employees (members of a bargaining unit) pay full union dues, initiation fees, and possibly assessments, whether or not they are an actual union Member. When pursuing their statutory rights, employees can face a union, represented by expert inside or outside legal counsel that opposes them in Board proceedings – representation that opposes them that the affected employee(s) are actually paying for. Therefore, employees are:

- Self-represented litigants, taking time off work without pay.
- Paying for legal counsel themselves and arguably never to the same level of funding as a union, employer, or labour board.
- Very rarely represented pro-bono, and even more rarely to the same level as a union or employer, or labour board.
- When they have counsel, they and their counsel have sometimes been subjected to attempts to pierce lawyer-client privilege; questions about retainers and hourly rates and how they afforded counsel, etc.

NOTE: LabourWatch is aware of instances where employees, who pursued their rights and appealed into the courts regarding what that the employees considered an adverse Labour Board set of actions and decision – faced a lawyer-represented Board arguing against them – along with union counsel making the same arguments.

No one can credibly describe the totality of this reality as fair.

LabourWatch Recommendation

Amend the *Code* to require a percentage of all union dues, initiation fees, assessments to be used to set-up a fund, augmented by further government funding analogous to legal aid, for employees in all types of *Code* proceedings.

3. Union Financial Disclosure

The current *Code* provisions and related case law essentially amount to no *Code*-based financial disclosure to either unionized employees or to union-free employees in BC who are considering unionization. Further, what information unionized employees can get amounts to a very, very high level of information such as a single page surplus/deficit statement or balance sheet - not actual transactions.

Section 151 has been held by the Board, repeatedly, to make it very difficult for unionized employees to get past union financial statements. (For example, see: *Roger Hubner and Francis Donovan et al., BCLRB No. B249/2007 (Leave for Reconsideration of BCLRB No. B231/2007) ("Hubner")*). The Hubner matter involved multiple Board and Supreme Court of BC decisions over several years that left the employees with little information and greatly frustrated.

These dues paying employees were fought relentlessly by the union they had to pay to keep their jobs, using their dues to fight them, while they proceeded largely on their own, self-represented at the Board, with some limited pro bono legal assistance for their court proceedings.

This is an unacceptable state of affairs for many obvious reasons.

Truly public union financial disclosure exists in multiple other countries, but not here in BC.
If one were to read all of the BC case law, one would find it is replete with union actions blocking access to information through fighting and litigating employee requests. This is another example of why a union cannot seen as the sole voice of public policy for workers.

LabourWatch Recommendation

Amend the *Code* and/or other relevant BC statutes to require full online public union financial disclosure consistent with the items set out in a repealed section of the *Income Tax Act* of Canada (https://www.parl.ca/documentviewer/en/41-1/bill/C-377/third-reading).

4. End *Code* Allowances for Forced Union Membership and Dues for Non-Bargaining Purposes

Numerous other countries, formerly but no longer, had government legislation that compelled or enabled:

- Actual union Membership as a condition of employment.
- Mandatory union dues (and other fees) for non-bargaining purposes as a condition of employment.

It appears that Canada, and BC in particular within Canada, are complete outliers in continuing to enable these violations of the United Nations Declaration of Human Rights.

LabourWatch is not aware of any nation with truly independent unions and truly free collective bargaining that have not, by way of statute, court rulings or human rights rulings put a complete end to such legislation or such clauses in collective agreements.

In Canada, unlike, for example Saskatchewan and the Federal statutes that do not allow termination of employment when Membership is not maintained or is lost, BC's *Code* has been interpreted to allow employment termination when an employee is denied Membership or loses their Membership.

Canada's Supreme Court has found that mandatory union Membership as a condition of employment is a *Charter* violation, but also decided to justify it under our Section 1 proportionality test. By way of contrast the European Court of Human Rights (in applying the European Convention on Human Rights that covers now 46 Member countries) has consistently applied its proportionality test in favour of employees and against Member country governments and what they allowed unions and employers to do to employees. Canada's Supreme Court decision (Advance 2001) narrowly decided (5-4) that, in particular, given Quebec's history of union vs union violence in Quebec's construction sector, that a scheme of mandatory training certificates and Membership in one of several specified unions was a justifiable *Charter* violation. While there were other 'justifications' this troubled history appeared to be the key factor.

Regarding mandatory union dues for non-bargaining purposes, a careful read of Justice Rand's 1946 Arbitration Award ending a strike in Ontario documents his clear denial, with reasons, of the union's request for mandatory Membership as a condition of employment. A careful read also demonstrates that he saw mandatory union dues or actual union Members and non-Members alike with a clear purpose at paragraph 30:

"All employees should be required to shoulder their portion of the burden of expense ***for administering the law of their employment, the union contract****" [Emphasis added.]*

At paragraph 35 Justice Rand continued:

> *"[the amount] shall not extend to a special assessment or to an increment in an assessment which relates to special union benefits such as for instance union insurance, in which the nonmember employee as such would not participate or the benefit of which he would not enjoy*."

It is also ironic that Rand wrote that not all unions should have such a clause in collective agreements:

> *"I should perhaps add that I do not for a moment suggest that this is a device of general applicability. Its object is primarily to enable the union to function properly. In other cases it might defeat that object by lessening the necessity for self-development. In dealing with each labour situation we must pay regard to its special features and circumstances."*

Nowhere in the whole Award can one find any statements by Supreme Court Justice Rand that these mandatory dues he awarded were for politics, charities, social causes, think tanks, out of Canada initiatives, etc. But that is what has happened.

This reality also sets Canada and BC apart, it appears on the same basis as set out above regarding Membership. That we now have dues clauses either required by some statutes in Canada or required in bargaining on union demand; that we have dues check-off at source – in totality an overall scheme often referred to as the "Rand Formula" – the present state flies in the face of key aspects of Justice Rand's Award.

When Sweden ended mandatory Membership as a condition of employment ahead of the European Court of Human Rights ending both pre-entry and post-entry mandatory Membership – Sweden required all employers and unions on their next round of bargaining to remove any Membership clauses so that no worker could be misled. By contrast, in the United States, while such collective agreements are not enforceable per US Supreme Court decisions, neither their high court, nor Congress have decided to follow the appropriate Swedish example and stop the use of such old language to still be used to trick employees into Membership.

LabourWatch Recommendation

Amend the *Code* and all other BC statutes, particularly in the public sector that mandate Membership in a prescribed union and/or other relevant BC statutes to end all statutory provisions and all collective agreement clauses mandating Membership as a condition of employment like all other relevant comparative countries in the world and with the essence of *Charter* case law.

Below is an example preamble to achieve BC worker UN and *Charter* human rights:

> *This enactment will bring the Labour Relations Act, 1995 into compliance with international norms and the freedoms protected by the Canadian Charter of Rights and Freedoms, to ensure that union membership is always a voluntary choice and mandatory dues collected from a unionized worker by a union are used only for the purpose of administration of the collective agreement, including the grievance process, and not for political, social and other causes.*
>
> ***Preamble***
>
> *Whereas Justice Ivan Rand of the Supreme Court of Canada set out the "Rand Formula" deduction of union dues in his seminal arbitration award in 1946; and*
>
> *Whereas Justice Rand refused, as part of his award, to require union membership as a condition of employment or continued employment; and*
>
> *Whereas Justice Rand ordered that both union members and non-members in the same bargaining unit would pay dues, the purpose of which was "the administering of the law of their employment, the union contract"; and*
>
> *Whereas Article 20 of the 1948 United Nations Universal Declaration of Human Rights contains both the freedom of association and states: "No one may be compelled to belong to an association; and*
>
> *Whereas other countries, including members of the European Union, the Council of Europe, Australia and New Zealand, have recognized the right of a worker to not join a union or be required*

to pay union dues as a condition of employment that are used for non-bargaining purposes in their workplace;

Whereas the Supreme Court of Canada has recognized the protection under Section 2(d) of the Charter of Rights of Rights and Freedoms includes "the right to be free from compelled association".

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

The Rand Formula Compliance Act to ensure that collective agreements negotiated pursuant to the Labour Relations Code, protect the fundamental choice and constitutional right of a unionized employee to become a union member or not – at any stage of employment and to ensure that union dues paid as a condition of employment are used exclusively for labour relations expenses.

5. Sectoral Bargaining

Ontario's construction sector has a very complicated scheme whose fundamental employee rights issue remains that employees can be unionized without the knowledge of all of the affected employees in cards with Board sanctioned use of deception. Once unionized this way, employees are almost always required to become Members of the applicant union as a condition of employment. They are covered by an existing collective agreement that they do not get to vote on at the point of unionization.

Aspects of our Submission above will not be repeated here, other than to note that sectoral bargaining as a standalone, let alone tied to card-based, secret deceptive organizing is antithetical to 'freely chosen' as well as UN and *Charter* human rights.

LabourWatch Recommendation

Do not amend the *Code* in favour of union leaders by stripping employees of their fundamental human rights as that would make 'freely chosen' in the duties section of the *Code* into a falsehood.

6. Right to Work, Replacement Workers and Picketing

Quebec's scheme appears to bar even a unionized employee from crossing the picket line of the union that has the employee's bargaining rights. Picket line crossing is a potential tool of a unionized employee to hold a union to account, to create risk for unions that have taken actions that were not accountable.

An actual Canadian example follows. While a Federal example, the general facts are applicable for illustrative purposes.

Multiple then TELUS employees contacted LabourWatch. Some ended up, by 2009, at the Supreme Court of Canada where the union was denied Leave to Appeal and lost its legal attack on the rights of these employees. They alleged, in summary, that a strike vote was taken with an

assurance there would be another strike vote that would take place before any strike action. That subsequent strike vote was not held, and a strike started.

Further, over several months, these employees alleged, TELUS offers were not shared with the then over 10,000 members of the bargaining unit. In Ontario and Quebec, 100% of TELUS employees went to work – not one picketed ever. In Alberta, over the months, over 3,000 employees, more than 50% of the Alberta workforce, crossed the picket line. In BC, TELUS did not open the workplace to employees to come to work. Employees believed TELUS did not have confidence that the RCMP, other relevant police forces, nor the courts, would enforce the rule of law in the face of potential union violence against such employees and their workplaces.

The United Nations Declaration of Human Rights includes Article 23, in part:

> *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment*.

LabourWatch Recommendation

As a counter-balance to union leader power and union leader ability to do what the TWU did to TELUS workers in 2005, do not amend the *Code* in favor of union leaders by stripping employees of their ability to cross picket lines.

Do not expand picketing to another legal jurisdiction's strike provisions and thereby involve employees of another legal jurisdiction and likely not directly related places of employment to the situations that could hurt their income and embroil them in litigation that is directly related to their collective agreement and workplace.

CLAC
better together

BC LABOUR RELATIONS CODE REVIEW

2024 Submission to the BC Labour Relations Code Review Panel

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CONTENTS

INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

CLAC is pleased to make these submissions to the BC Labour Relations Code Review Panel.

We are generally supportive of the current labour law regime in the province, its implementation by the labour relations board, and its administrative processes.

Labour legislation should not be subject to wild swings of the pendulum. Therefore, statutory change should be cautious. When change occurs it ought to clearly promote the paramount purposes of modern labour relations policy.

In our view, the core purpose of the code is to foster unimpeded access to unionization where a majority of employees in a workplace wish to have such representation.

We propose that you consider making legislative changes in the following areas:

SECTION 19 – RAIDS

Recommendation 1

The annual open period in construction should be eliminated and replaced with an open period in the third year of the collective agreement during its seventh and eight months.

Recommendation 2

The entitlement of an incumbent union to participate in a representation vote should be prescribed by statute.

Recommendation 3

Amend Section 18(2)(a) to provide that a raid application may be made where no collective agreement is in effect only after 12 months from the date of certification.

Recommendation 4

Empower the labour relations board to regulate no-raid pacts that limit employee free choice.

COERCION AND INTIMIDATION THAT LIMIT UNION MEMBERSHIP CHOICE

Recommendation 5

Protect employee confidentiality and respect privacy rights with respect to membership evidence.

Recommendation 6

Prohibit threats to security of employment, compensation, and benefits or threats of fines based on union membership choice.

IMPOSE STRICTER TIME LIMITS FOR THE LABOUR RELATIONS BOARD TO CONCLUDE CERTIFICATION PROCEEDINGS

Recommendation 7

Provide a statutory, expedited process for certifications.

Recommendation 8

If necessary, provide additional resources for an expedited certification process.

SECTION 45(1)(B) – STATUTORY FREEZE

Recommendation 9

Extend the statutory freeze in Section 45(1)(b) from 12 months to 24 months.

MAINTAIN WALL-TO-WALL ORGANIZING

Recommendation 10

Maintain wall-to-wall organizing in the construction industry and reject any calls to restrict the industry to a craft-based labour relations model.

SECTION 19 – RAIDS

Recommendation 1
THE OPEN PERIOD

The annual open period for the construction industry is unnecessarily disruptive, misaligned with other jurisdictions in Canada, and produces no tangible benefit to stakeholders, including employees, employers, industry, or the general public.

We support a raid period in the third year of the collective agreement during its seventh and eighth months.

The rationale that supported the construction industry exception was concern that those employed on short-term construction projects would not have an opportunity to change their union representation. However, that opportunity has not been taken up in recent memory, and certainly not while the construction exception has existed.

Building Trades Unions filed a total of six raid applications for construction bargaining units represented by CLAC in 2022 and 2023, all of which were dismissed due to a lack of employee support. In each case, the bargaining unit was either tied to a long-term, multi-year project, and/or an employer with a lengthy operating history in the province. As such, the Building Trades recent raid history debunks the flawed premise upon which the amendment was justified.

Although each application was ultimately dismissed, raid activity is disruptive, impacting productivity and the ability of workers to deliver projects on time and on budget. One of the aforementioned raid attempts occurred on a major piece of energy infrastructure; undue delays to a project of such magnitude impact all stakeholders, including all residents of BC and the country, who ultimately fund such ventures.

We note that this exception for the construction industry was not recommended by the 2018 review panel.

In our view, the labour relations board and its administrative personnel have met their respective obligations in administering the legislation to recognize and respect the limited resources of their stakeholders, including trade unions. Board processes are almost always extremely efficient, and when that it is not the case, the fault generally lies with others, not the board or its personnel.

However, one of the features of our legislation that substantively encumbered access to unionization up to 2018 was the relative ease and frequency which trade unions had to engage in raid campaigns under Section 19 of the code.

A non-union workforce does not have genuine access to unionization when the opportunities to even meet its proponents are artificially limited. In our view, the current statutory right to annual raiding in the construction industry constitutes such a limitation.

Organizing is expensive. As a practical matter, the legislation should not encumber a union to defend its successful organizing efforts so soon after it has established its right to bargain collectively.

As a practical matter, the ability of any union to engage in organizing campaigns

is subject to the availability of resources, both human and financial.

While raids are disruptive, the same is true of the period when parties are engaged in collective bargaining, which most often occurs during the last few months of the collective agreement.

There is no principled basis to treat construction differently from other industries. The raid period should be based exclusively on the realities of the collective bargaining relationship. The seventh and eighth months best preserve the likelihood that there are no extraneous considerations while a raid is under way.

Further, we suggest that if unions applied their organizing efforts to non-union workplaces, the goal of securing access to collective bargaining for non-union employees would be much better served.

> **Recommendation 1:**
> The annual open period in construction should be eliminated and replaced with an open period in the third year of the collective agreement during its seventh and eight months.

Recommendation 2
INCUMBENT UNION PARTICIPATION IN A VOTE

Following the 2018 amendments that secured card-based certification, the labour relations board established a process whereby raid applications, if the threshold was met, might result in immediate certification of the applicant, without providing the incumbent an opportunity to confirm continued bargaining unit support via a run-off representation vote.

Recent jurisprudence has confirmed that there should generally be a representation vote.

We propose that a representation vote be required in all cases where an applicant seeks to replace an incumbent bargaining agent. This is the norm across Canadian jurisdictions. The risk that a vote might not be held is a clear intrusion upon the freedom of association of bargaining unit members.

> **Recommendation 2:**
> The entitlement of an incumbent union to participate in a representation vote should be prescribed by statute.

SECTION 19 – RAIDS

Recommendation 3
SECTION 18(2)(A) AMENDMENTS

The 2018 review panel recognized that six months was an inadequate time period to conclude a collective agreement and extended the statutory freeze upon employers to change terms and conditions of employment to one year.

We do not recall that any stakeholder proposed a companion amendment to Section 18(2)(a) based on the identical rationale.

A newly certified union negotiating a first collective agreement should not have to face a raid threat so early in its bargaining relationship with the employer.

Recommendation 3:

Amend Section 18(2)(a) to provide that a raid application may be made where no collective agreement is in effect only after 12 months from the date of certification.

Recommendation 4
REGULATE NO-RAID PACTS

Certain trade unions have promoted statutory provisions to maximize raid opportunities. They do so by arguing that the free choice of employees to select their bargaining agents is a core feature of sound labour law policy. Nonetheless, it seems many of those unions enter into no-raid pacts to ensure that their own members' rights to select a different bargaining agent are limited.

Recommendation 4:

Empower the labour relations board to regulate no-raid pacts that limit employee free choice.

COERCION AND INTIMIDATION THAT LIMITS UNION MEMBERSHIP CHOICE

Recommendation 5
CONFIDENTIALITY OF EMPLOYEE CHOICE

When an employee revokes their union membership application during an organizing drive, that revocation is only recognized by the labour relation board if it is delivered to the union.

For all other purposes of the code, union membership in a certification application is not required to be disclosed to any person or entity other than the board. The board will never compel a witness in a hearing to disclose whether he or she signed a card or voted for or against a union.

Currently, the legislation requires that when an employee wishes to revoke support for a raiding union prior to the application being filed, that revocation must be disclosed to the raiding union.

In our view, union preference should always be treated as a private matter between the employee and their union of choice.

There are obvious reasons the current legislation does not permit employers the right to know which of its employees support a union in an organizing drive. These concerns include the potential for threats and intimidation. These concerns are no less real where there is a competition between unions.

Our legislative scheme purports to endorse employee democracy within workplaces during certification efforts so as to determine the true wishes of employees. Insofar as raid campaigns are concerned, the reality is something quite different. There are concrete examples why union choice should remain confidential.

Many employees in this economy have more than one job. Most unionized workplaces adopt a union or closed shop requirement so that employees must become members of the union to maintain employment. A union in such circumstances can exercise economic control over that employee that is not much different from an employer's ability to coerce union choice.

The object of the code is to freely allow a majority of employees at a given workplace to make a democratic choice with respect to union representation. Disclosure of an employee's wishes to revoke support for unionization at a different workplace where they want different representation is completely at odds with the respect for privacy otherwise afforded to employees.

There are clear examples of the harm caused by the requirement to disclose a revocation.

During the lengthy raid campaign involving the employees of Peace River Hydro Constructors, one of the raiding unions told employees who were also members of its sister union in Alberta that refusal to sign a BC membership card would result in being barred from work in Alberta.

Whether or not that was a lawful tactic is not the issue here. The reality is that employees faced with that threat signed

COERCION AND INTIMIDATION THAT LIMITS UNION MEMBERSHIP CHOICE

a membership card. They ought to have been able to revoke that support without disclosure to that union. In reality, these employees had no right to execute a revocation in the circumstances.

The threat in the Peace River Hydro Constructors raid at Site C was likely beyond the purview of the labour relations board to control threats coming from an Alberta trade union.

A practical way to protect free choice is to maintain confidentiality of employee choice. This would also align BC with other Canadian jurisdictions, including the federal jurisdiction.

A fair revocation process would permit employees to express their true wishes. There should be an avenue to limit revocation to the effect that membership cannot be used for the purposes of that application or that employer.

Recommendation 5:

To amend the code to provide that revocation of support for a union during an organizing drive may be made in confidence to the board alone for the limited purpose of indicating a lack of support for the particular application in question.

Recommendation 6
PROHIBIT THREATS TO WORKERS

The current unfair labour practice provisions of the code likely prohibit a raiding union from threatening to cancel benefits or pension entitlements depending on signing a card or not signing a revocation. But to an untrained eye, it is not readily apparent that the broad language prohibiting "coercion" captures the very real concerns of an employee faced with such a threat.

We propose a clearer definition of what may not be threatened in an organizing drive by a union seeking evidence of support.

Reference to such legislation will make it easy for an employee to understand their democratic right to choose their preferred bargaining agent.

Section 6 of the code sets out a list of employer prohibitions. Union threats are constrained by far less clear language in Section 9, even though the union may well have significant control over a member's financial well-being.

We propose a mirror provision to Section 6(1)(d) such as:

> *A union or a person acting on behalf of a union shall not seek by intimidation, by threat of dismissal or loss of employment opportunities, or by any other kind of threat, or by the imposition of a penalty, fine, or loss of benefits or pension entitlement, 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 any trade union.*

Recommendation 6:

Prohibit threats to security of employment, compensation, and benefits or threats of fines based on union membership choice.

IMPOSE STRICTER TIME LIMITS FOR THE LABOUR RELATIONS BOARD TO CONCLUDE CERTIFICATION PROCEEDINGS

Recommendation 7
EXPEDITED CERTIFICATION PROCESS

Recently, we have faced lengthy delays in securing certification. Where nothing happens as far as bargaining unit members are concerned for many months after the filing date, they do not share the view that their rights are protected by dint of the vote "being in the can."

We understand that the board has finite resources, and that all parties believe their cases are the most important. However, the board has no more important a function that determining entitlement to certification.

Processes and time constraints and calendars often conspire to slow down the aspirational goal of expedition. Extensions on the statutory time limits are common in many proceedings.

In our submission, there should be a limitation on the extensions, if any, permitted in the case of certifications.

The code should also expressly encourage bottom line decisions to expedite certification proceedings.

> **Recommendation 7:**
> Provide a statutory, expedited process for certifications.

Recommendation 8
PROVIDE ADDITIONAL RESOURCES

Every party who accesses the labour relations board promotes the view that additional resources be committed to it. That is certainly our view.

We submit that if additional resources are made available, they be aimed expressly at expediting certification applications.

> **Recommendation 8:**
> If necessary, provide additional resources for an expedited certification process.

SECTION 45(1)(B) – STATUTORY FREEZE

Recommendation 9
STATUTORY FREEZE

The 2018 review panel recommendation resulted in an extension in the statutory freeze from four months to one year.

In our submission, that is not always long enough to reach a collective agreement, particularly where the bargaining unit is larger and somewhat unique in character (e.g. a university complex).

We prefer a simple extension to two years, rather than more subjective options such as to continue the freeze "while the parties continue to engage in good faith bargaining" in order to keep the issue away from adjudication as much as possible.

Recommendation 9:
Extend the statutory freeze in Section 45(1)(b) from 12 months to 24 months.

MAINTAIN WALL-TO-WALL ORGANIZING

Recommendation 10
WALL-TO-WALL ORGANIZING

We anticipate that you will receive submissions from proponents seeking a fundamental reorganization of construction labour relations in the province. Their argument is that BC would be best served by the craft-based (jurisdictional) construction organization regime, effectively eliminating wall-to-wall construction bargaining units.

Restricting or banning wall-to-wall organizing in construction would cause intense disruption to an otherwise thriving industry, while offering no benefits to the employees or employers. Quite simply, such a proposal is purely bad public policy.

There is no evidence that restricting the construction industry to a craft-based labour relations model has offered any benefits to the construction workforce or citizens of any jurisdiction where this has occurred.

In fact, all evidence points to the opposite.

If the craft-based model was a highly efficient or effective way of organizing a construction project, the Jurisdictional Assignment Plan for the BC Building Trades would be unnecessary. Further, only BC, Alberta, and Saskatchewan—none of which prohibit access to participation in the construction industry by wall-to-wall based union organization—enjoy sufficient economic strength to not receive federal equalization payments. All have relatively robust construction sectors, including private sector construction activity.

Certainly, the largest construction projects in the province,—pipelines, LNG, mines, and dams—would not be viable absent healthy access from the largest pool of potential bidders.

Eight of the nine largest construction companies in Canada have enjoyed a long-term presence in BC:

- PCL
- Ledcor
- Bird
- Aecon
- EllisDon
- Kiewit
- Graham
- Pomerleau

All of these companies rely upon workforces that have opted for wall-to-wall representation in collective bargaining. SNC Lavalin is the ninth and largest of Canadian construction companies. When it was active in BC, having bid successfully on the Canada Line project, that work was performed by Cambie Street Constructors, a wall-to-wall certification.

Any suggestion that BC is better served by a different labour relations model for the construction industry is ideologically based and is not based on any evidence of past or current success.

MAINTAIN WALL-TO-WALL ORGANIZING

When asked to review our labour legislation, review panels such as yours have never seemed impressed by calls to eradicate wall-to-wall organization in the construction industry. We are certain that no thoughtful examination of the industry would ever support that change.

We are confident that this panel will reject the idea that there is any rational basis to propose a structural change in construction labour relations to mimic failed eastern Canadian models. We ask the panel to reject any such proposals expressly and categorically.

> **Recommendation 10**
>
> Protect wall-to-wall organizing in the construction industry and reject any calls to restrict the industry to a craft-based labour relations model.

AFTERWORD

Our submission on construction sector organization aligns with core principles of the *Labour Relations Code*, specifically:

- A core purpose of the code is to provide employees access to collective bargaining via their "freely chosen" bargaining agents. Nothing in the proposals to eliminate wall-to-wall organization in construction advances that purpose.
- A core obligation of the labour relations board is to "foster the employment of workers in economically viable businesses." Nothing in the proposals to eliminate wall-to-wall organization in construction advances that obligation.
- A core principle of labour relations jurisprudence for decades is the express preference for larger bargaining units. Nothing in the proposals to eliminate wall-to-wall organization in construction advances that principle.

CONCLUSION

BC workers are relying on this review panel to preserve the many beneficial provisions found in the labour relations code, and to deliver meaningful improvements.

CLAC will continue to put forward constructive proposals for change. We are always available for consultation. If you would like to interact with us, please reach out to Kevin Kohut, CLAC BC director, at kkohut@clac.ca.

Coalition of Business Associations

Submission to

Section 3 *Labour Relations Code* Review Panel

March 22, 2024

Prepared with the assistance of
Roper Greyell LLP

Endorsed by:

Business Council of British Columbia

British Columbia Chamber of Commerce

Greater Vancouver Board of Trade

Canadian Federation of Independent Business

British Columbia Hotel Association

British Columbia Trucking Association

Canadian Homebuilders Association

Canadian Manufacturers & Exporters

Restaurants Canada

Retail Council of Canada

Tourism Industry Association of BC

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INTRODUCTION

The signatory associations represent large, medium-sized and small business enterprises across all sectors and regions of the provincial economy. Together, the associations and their members account for most private sector employers in the province.

We appreciate the opportunity to provide this submission to the Panel appointed by the Minister of Labour pursuant to section 3 of the B.C. *Labour Relations Code* (the "*Code*"). As a group, we are aligned on the importance of having a fair and balanced Labour Code that provides for stable labour relations. Subsection 3(4) of the *Code* expressly requires the Panel to "conduct consultations" when undertaking its review.

In this submission we outline:

- concerns regarding the process;
- perspectives on the role of the Panel and this review;
- the vital need for labour relations stability in the currently dismal economic situation; and
- some matters that we believe the Panel should and is likely to consider.

PROCESS

The timeframe for submissions is short, particularly given the importance of matters the Panel will consider. The compressed timeline is perplexing. The Panel informed the community about its work on February 2, 2024, and indicated submissions would be due just four weeks later March 1, 2024. After the business community (led by the Greater Vancouver Board of Trade) indicated the timeline was problematic, a three-week extension was announced just ahead of the original deadline on February 28. We note that a similarly rushed process and set of events played out during the 2018 *Code* review. Then, it was announced that submissions needed to be submitted within four weeks of the Panel being announced. The community voiced concerns about the short timeline and the timeline was extended. Thus, considering the government knew years in advance this review would occur in 2024, and following the experience of 2018, it is difficult to understand why the timelines are so abbreviated and, in any event, having to be slightly extended at the eleventh hour.

Questions about the sincerity of the process have been heightened by the government making a surprise amendment to the *Code* (Bill 9, *Miscellaneous Statutes Amendment Act*, 2024) without any consultation and while its own legislated s. 3 consultation process is active. The change expands the risk secondary picketing will affect neutral third parties and significantly affect critical sectors and large operations (and is discussed later in this submission). If the government is simply going to adhere to the bidding of the labour movement and make *Code* changes while the Review Panel is active, the authenticity of the review process comes into question.

An even more significant amendment was made between the 2018 *Code* review and this Code review when the government eliminated the secret ballot as part of the union certification process. That change also occurred without undertaking any updated consultation with the business community. Prior to winning a majority in 2020 the government could not implement organized labour's preferred card check system because of its Confidence and Supply Agreement with the Green Party, which steadfastly supports the secret ballot as a fundamental democratic element of the certification process.

We have observed a growing tendency for the government to advance and implement major legislative changes affecting the business community without undertaking meaningful, and sometimes without any, consultation (examples include but are not limited to the Net Zero New Industry Intentions Paper, the Output Based Pricing System Technical Backgrounder, the B.C. Oil and Gas Emission Cap Policy Paper, and amendments to the *Land Act*). We sincerely hope the Government treats this *Code* review with more care, particularly given the express requirements to consult in s. 3 of the *Code*.

Uncertainty about matters the Panel will address

The Panel has not provided any indication in advance of the submission deadline(s) of particular matters it expects to consider, nor has it indicated that it will seek further or responsive submissions from stakeholders on matters considered or raised by others. To date the Panel has advised:[1]

- The Panel's terms of reference refer to the Premier's Dec. 2022 mandate letter to the Minister of Labour that includes a direction to "ensure our labour law is keeping up with modern workplaces…providing stable labour relations and supporting the exercise of collective bargaining rights";
- The Panel is directed to assess the issues canvassed with and by stakeholders with consideration of section 2 of the *Code* and with a view to relevant developments in other Canadian jurisdictions; and
- The Panel is interested in views regarding "any changes to the *Code* [we] believe are necessary in order to properly reflect the needs and interests of workers and employers in the context of our modern economic realities."

We believe the Panel will not meet its section 3 obligations without the opportunity for <u>all</u> stakeholders, including the signatories to this submission, to be consulted on <u>all</u> topics considered in the Review. At this point we can only guess what matters the Panel may consider in submissions and the public hearings and advance other matters we believe it should consider. We anticipate having a further opportunity to address the Panel on any additional matters that arise affecting labour relations stability and employers' interests. Absent that opportunity, any *Code* amendments flowing from the Review process will fall short of the meaningful consultation part of section 3 and be contrary to sound labour policy.

[1] Panel's February 2, 2024 letter to community.

SECTION 3 REVIEW AND THE ROLE OF THE PANEL

Section 3 of the *Code* contemplates a review of "this code and labour management relations" to identify any problems with *Code* provisions and/or need for *Code* amendment, all following mandatory consultation. The Panel must further conduct its review in keeping with the *Code* s. 2 requirement that *Code* powers be exercised in a manner that:

(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.

The Panel is tasked with identifying if any changes to the *Code* are necessary to maintain and further the above *Code* purposes in the public interest not the special interests of unions or employers that Panel members may interact with in their typical work. The review is *not* an opportunity for the government of the day to make amendments to the *Code* that are known to align with an ideological interest.

The current Panel is modelled after the sub-committee of special advisors (Vince Ready, John Baigent and Tom Roper) that was assembled in 1992 by then Minister of Labour Moe Sihota. The 1992 sub-committee's task was to review the *Code* "having regard for the need to create fair laws which will promote harmony and a climate conducive to the encouragement of investment." The sub-committee's work came in the wake of the *Industrial Relations Act* (the "*Act*") being enacted in 1987 with limited consultation and which was perceived to significantly limit the rights of organized labour. Organized labour boycotted the legislation and the Industrial Relations Council which was established under the legislation. The boycott and unrest continued through the fall of 1991 when the sub-committee's work and process for labour law reform commenced.

The sub-committee's recommendations led to the first iteration of the modern *Code* in B.C. The legislation was widely viewed as balanced and established the foundation for a long period of labour relations stability following the tumult of large pendulum-like swings in labour legislation and labour unrest.

Groups and organizations met with the sub-committee to advance their interests, but the sub-committee focused on its broader mandate which included promoting "…harmony and a climate

conducive to the encouragement of investment." The fact that the broad public interest was the paramount consideration is reflected in the fact that Mr. Roper supported aspects of the report considered to be more aligned with labour's interests (e.g., supporting a return to card-based certification if other elements of reform and balance were also put in place) and Mr. Baigent supported aspects of the report more aligned with employer interests (e.g. preserving restrictions on secondary picketing with some caveats including his assumption that the new legislation prohibiting the use of replacement workers during a labour dispute would act as a counterbalance).

We urge the Panel to approach its work with a focus on the public interest aspects of stable labour relations and urge the government to similarly focus on public interest and the need to attract capital investment when contemplating *Code* amendments. Incrementally advancing special interests aligned with the government should not be the basis for changes to the *Code*. Sound labour relations policy that puts public interest at the forefront and incorporates current circumstances should be the primary guides to the Panel's work.

RESTORING AND PRESERVING BALANCE

The first iteration of the *Code*, based on the 1992 sub-committee's recommendations, was widely viewed to have restored a level of balance to the labour relations landscape at the time. The 1992 *Code* has been amended several times.

Business considers the current *Code* retains much of the balance established in 1992. However, existing differences between the current and 1992 versions of the *Code* now tilt the balance towards the interests of organized labour. More amendments in this direction will inappropriately skew labour relations legislation in B.C.

The key amendments since 1992 are summarized in Table 1 on the next page. Provisions that are now different from the *1992 Code* are in bold print.

Table 1: Significant Code Amendments since 1992

ALIGNED MORE WITH ORGANIZED LABOUR'S INTEREST	LITTLE IMPACT ON BALANCE	ALIGNED MORE WITH BUSINESS' INTEREST
1998 – Bill 26		
Added provisions imposing sectoral bargaining for the construction industry		
2001 – Bill 18		
		Revised certification process to include a secret ballot vote Repealed the sectoral bargaining provisions for the construction industry Added a consideration of threat to the provision of "educational programs" to essential service considerations
2002 – Bill 42		
	Amended s. 2 - list *Code* "purposes" to *Code* "duties" re exercising powers under the *Code*	Revised "right to communicate" provision to preserve the right to express views on any matter provided no intimidation or coercion
2019 – Bill 30		
Amended definition of "picketing" earlier nullified by Court decision to expressly exclude consumer leafletting **Created "deemed" successorship upon retendering of contracted services in building cleaning, security, bus transportation, food, and non-clinical health sector service sectors with ability to add other sectors through regulation** **Enhanced circumstances the Board could impose automatic certification as a remedy for unfair labour practices during an organizing campaign (context of preserved secret ballot vote)** **Reduced time for scheduling of representation votes from 10 to 5 days (note that mandatory secret ballot vote maintained)** Amended "right to communicate" provisions to the version in place prior to 2002 changes **Increased the statutory freeze period and prohibition of decertification following certification from 4 to 12 months** Eliminated "education programs" from essential service considerations **Amended s. 80 to create industry councils to address labour relations in certain industry sectors**	Reduced number of open periods for union raids Amended s. 3 to require 5-year reviews and to make consultation mandatory Mandatory case management & amended timelines & process for expedited arbitration	
2022 – Bill 10		
Returned to card-based certification / removed mandatory requirement for secret ballot vote		

Except for changes to s. 2 (*Code* purposes to *Code* duties), all amendments to the *Code* that represent a change compared to what existed in 1992 have occurred in 2019 and 2022. These amendments have all been very favourable to the interests of organized labour or neutral in their effect upon the interests of organized labour and employers. New provisions to the *Code* in 2019 that are particularly challenging for the employer side of labour relations are:

- severely reduced time for scheduling of certification representation votes from 10 to 5 days which drives certification hearings to be conducted within 5 days (which has been retained despite subsequent return to card-based certification);
- expanded remedial certification provisions (also retained despite return to card-based certification); and
- "deemed" successorship upon retendering of contracted services.

The *Code* moved further toward the interests of organized labour and/or diminished employers' interests when the secret ballot was eliminated outside of the last s. 3 *Code* review process and without any other consultation:

- return to card-based certification in 2022.

In its work we urge the Panel to fully recognize the need for balance and the need to prevent pendulum-like swings in labour legislation and to be mindful of the significant changes that occurred in 2019 and 2022.

Unbalanced labour legislation will invite rapid and substantial amendments to the Code from future governments in the other direction.

CURRENT ECONOMIC CONTEXT

The Panel has asked for participant views on *Code* changes in the "context of our modern economic realities". In addition, *Code* s. 2 considerations include fostering employment in "economically viable businesses."

Maintaining balanced labour legislation is always critical but is perhaps even more so given the current economic realities. B.C. faces a sobering economic outlook. Supercharged population growth, owing to the federal government's immigration policies, is keeping topline economic growth positive. But looking through the veneer of population growth, real income (GDP) per capita is expected to fall 2 per cent in 2024, after declining 2 per cent fall in 2023. The "economic pie" we all share is shrinking. A key reason is the drop in business investment and contraction in key parts of B.C.'s export base. **In 2027, provincial real GDP per capita is projected to be lower than in 2019, according to projections in the 2024 B.C. Budget.** (2024 B.C. Budget, p100)

Businesses and investors with capital to deploy look for competitive and stable jurisdictions in which to locate and operate. They compare the business and public policy environments across multiple provinces/states when deciding where to invest and expand. It is common to consider

the availability of skilled labour, the cost of inputs, market access, and government policies and regulations touching on taxation, environmental standards, and labour and employee relations.

An unavoidable "modern economic reality" the Panel must consider is the unprecedented weakness in private sector job creation. The number of employees in B.C.'s private sector fell 0.3 per cent in 2023. While it is a small setback it is unusual to see the aggregate number of employees in the private sector decline outside of recessionary periods. Much more concerning is the fact that every other province registered strong growth in the number of private sector jobs of between 3.3 per cent and 4.6 per cent in 2023.

The Panel should also recognize B.C.'s weak job growth "reality" extends back several years as it works to fulfill the s.2 requirement that "*Code* powers be exercised in a manner that: (b) fosters the employment of workers in economically viable businesses." Since 2019 the number of employees in B.C.'s private sector has advanced just 1.5 per cent while in the rest of Canada private sector employee counts are up 6.7 per cent over the same period (i.e., more than 4x faster). It is not sustainable for B.C. to rely on expanding public sector employment to keep total job growth positive. The Panel should reflect closely on the role labour legislation and policy, and the risks and costs associated with labour disruptions, might be playing in the unprecedented divergence in B.C.'s private sector job growth with all other provinces.

Code provisions that are imbalanced or fail to consider the concerns of business in the labour relations equation will weigh on investment, hiring activity, and business growth. These considerations must remain front and center for the Panel as they ultimately affect the prosperity and well-being of all British Columbians.

ISSUES FOR THE PANEL TO CONSIDER

Below we outline amendments to the certification process that we believe will provide better balance and stability and help attract capital investment and create jobs, and comment on two other amendments we anticipate organized labour may request that, if implemented, would upset the necessary labour relations balance and stability.

Certification Process and Automatic Certification Rules

The timeline in the *Code* for a certification vote to be held was cut from 10 to 5 days, and the availability of remedial certification entrenched in 2019. Those changes followed (and were in response to) recommendations of the 2018 s. 3 review panel that the mandatory secret ballot vote be preserved. The panel, which 2 to 1 recommended maintaining secret ballots, reasoned:[2]

> The integrity of the secret ballot vote …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.

[2] Recommendations for Amendments to the Labour Relation Code, Aug. 31, 2018, pg. 12.

> This 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 timeframe 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.

The reduced vote timeline has led to the Labour Relations Board similarly reducing the time it allows employers to produce employee information and participate in certification hearings. Employers are left with little time to respond to certification applications which are often filed late on Friday afternoons significantly impacting the fairness of proceedings for employers.

As outlined above, the government removed mandatory secret ballot votes and returned to card-based certification in 2022 despite the 2018 s. 3 review panel's recommendation against such change and absent any further consultation. The government made the change after it achieved a majority government and no longer needed the support of the Green Party to pass legislation the Greens viewed as undemocratic.

The method by which statutorily imposed union representation occurs is a significant issue for both employees and employers. There are more than three decades of *Charter* decisions since the 1992 *Code* was enacted addressing the right to unionize and engage in collective bargaining as aspects of the fundamental freedom of association. *Charter*-protected rights to free association in Canada also include the freedom *not* to associate, recognizing that each employee has the right to make his/her *own* choice without coercion or intimidation by anyone. The *only* mechanism that ensures this freedom is respected is the secret ballot vote. The vote provides the only forum whereby employees can freely express their wishes anonymously, without fear of retribution or unintentionally influencing others. These principles are fundamental to our democracy. We see no justification for denying employees, who are being asked to determine if they want their workplace to be unionized, this basic right.

In recent years and certainly since 1992 there have been significant advancements in the use of on-line systems for secret-ballot voting that enhance the anonymity of the voting process and reduce concerns about interference from either employers or unions in the voting process. While many union cards are also signed electronically, there is no guarantee that such signatures can occur without the presence of the union organizer or co-worker requesting the signature. The card-check system assumes that employees sign cards free of coercion or misinformation, an assumption that cannot be effectively monitored or evaluated other than through ensuring employees' right to cast a secret ballot to confirm their wishes.

A secret ballot vote for union certification should be reinstated. The freedom to associate and *not* to associate is fundamental to our democracy. The secret ballot offers the best system for

determining employees' wishes by not having the union selection process occur while organizers and others are present, opening the door to potential improper pressure on individual employees.

Even though B.C. has returned to card-based certification, employers continue to be faced with little to no time to respond to certification applications. Employers deserve a reasonable opportunity to receive advice and comment on the scope and appropriateness of the bargaining unit at issue and the Board needs to hear from employers on those matters to fulfill its mandate of certifying "appropriate" bargaining units.

B.C. is now an outlier in this respect. The only other jurisdictions with such tight timeframes for representation votes (and consequently for certification hearings) are Ontario and Newfoundland, both of which have mandatory representation votes (secret ballot) in advance of certification. The other jurisdictions with card-based certification in all sectors (Quebec, New Brunswick, PEI and Federal) have no timeframes for scheduling representation votes.

In the alternative that the Panel does not recommend and/or the government does not enact a return to a secret ballot for employees on certification, the tightened timeframes added in 2019 to address concerns specifically related to the then-preserved secret ballot process must be reversed. The *Code* must be amended to allow at least 10 business days in advance of any representation vote, which will allow the Board to return to more reasonable while still expedited timelines for employer participation in certification proceedings.

Government also retained the provisions entrenching and enhancing access to automatic certification added in 2019 despite the subsequent return to card-based certification in 2022. Those provisions were, as outlined above, deemed necessary only in the context of a preserved secret ballot vote so are misplaced absent returning to having a secret ballot vote.

In the alternative that the Panel does not recommend and/or the government does not enact a secret ballot for employees on certification, the 2019 enhanced automatic certification provisions must be removed from the *Code*.

Sectoral Bargaining

Our coalition anticipates that stakeholders from organized labour will advocate for *Code* amendments that would permit sectoral bargaining in certain sectors. Any such amendments would clearly skew the balance necessary for stable labour relations conducive to attracting investment and would be inappropriate absent full and meaningful consultation that includes studying the ramifications of any sectoral bargaining model.

The last s. 3 review panel received submissions on this subject in 2018 and did not recommend *Code* amendment. It acknowledged that the majority of the 1992 sub-committee supported sectoral certification for sectors of low union density within geographic areas where employees perform similar work for similar businesses (with Mr. Roper dissenting). But it also went on to indicate that no such model was adopted in the *1992 Code*. The 2018 panel concluded:

> Despite ongoing discussions over the years regarding possible innovations in labour legislation there are few North American examples of mandatory multi-employer certification regimes…
>
> 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.[3]

From our perspective, it is very telling that despite the majority of the 1992 sub-committee recommendation for a form of sectoral certification, no such legislation has surfaced in B.C. or anywhere in Canada in the intervening three decade plus period.

The 2018 panel further commented that the issue of broader-based bargaining structures would require further examination and analysis through a more in depth and dedicated process and recommended that such structures should be examined "by industry councils under Section 80 and, in appropriate circumstances, by an industrial inquiry commission."[4] No such work or study has occurred in the intervening years. This Panel's abbreviated and generalized process will also be an insufficient basis for introducing multi-employer certification.

Adding the concept of sectoral certification or broad-based bargaining to the *Code* will upset the balance in labour relations that is critical to labour stability and economic growth in B.C. It will also make B.C. an outlier in Canada in this respect. The only other jurisdiction with any form of private sector sectoral certification beyond the construction sector in its labour legislation is the "decree" system in Quebec that predates and stands alongside its mainstream labour legislation. That system allows for the extension of certain agreements to other employers or workers within a sector or geographic area upon application to the Minister of Labour. The scope and application of this decree system has substantially reduced from the time of the work of the 1992 sub-committee and no other jurisdiction has adopted any such system within or alongside its labour legislation.

Our associations oppose sectoral certification for many of the same reasons outlined in Mr. Roper's dissenting opinion in the sub-committee's 1992 report. Mr. Roper wrote that sectoral certification provisions exceeded the mandate of the sub-committee and would "upset the balance in the legislation" and "would swing the pendulum in favor of trade unions."[5] Mr. Roper also expressed concern about the implications of imposing on employers collective agreements considered to be "standard" in a particular sector of the economy, regardless of differences in the workplace and/or an employer's ability to sustain the costs of the agreement.

We concur with Mr. Roper that such an approach would not promote conditions favourable to the orderly, constructive and expeditious settlement of disputes. Rather it would impose collective agreements on employers and that would be "investment-negative" for small- and medium-sized businesses. As Mr. Roper put it, anyone looking to expand businesses will "think

[3] Recommendations for Amendments to the Labour Relations Code, Aug. 31, 2018, pg. 17.
[4] *ibid*, pg. 26.
[5] 1992 Recommendations for Labour Law Reform, Appendix 3-1.

twice" about investing in B.C. if they risk having a sectoral agreement that is at odds with their business plan imposed upon them.

Finally, we are aware that industry-focused bargaining already occurs in important sectors of the economy, including the forest sector, but emphasize these are based on "voluntary" arrangements that have and will continue to vary over time depending upon prevailing economic circumstances.

The Code should not be amended to include sectoral bargaining, doing so would necessarily upset the required balance. Moreover, introducing any form of sectoral certification into the *Code* would be premature, absent very extensive consultation and careful study and consideration.

Picketing Regulation

We also expect organized labour will advocate for eliminating current picketing restrictions within the *Code*. The business community strongly opposes any such amendments.

Picketing laws are designed to balance the economic power exerted by both parties during a strike or lockout. Significant problems arose in the 1980s when employees at some resource-based businesses with integrated operations went on strike and picketed the company's other operations where employees were represented by a different union and working under a binding collective agreement.

The Review Panel should be under no illusions on this point: investment will steer clear of a jurisdiction that permits picketing of an operation that has a settled and binding collective agreement with its union. There is no justification for expanding a labour dispute beyond the location of the strike or lockout.

The 2018 panel considered submissions calling for elimination of secondary picketing restrictions and declined to recommend such amendments based on its desire to preserve the balance that flowed from the 1992 report. The 2018 panel commented:

> The restriction on both secondary picketing and the use of replacement workers during a labour dispute were proposed by the 1992 Report…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 be a package. In our view, the countervailing restrictions on secondary picketing and use of replacement works during a labour dispute have worked well and should be maintained.[6]

British Columbia is the only common law jurisdiction in Canada which bans replacement workers. This provision itself can act as a disincentive to invest. There is simply no room to now eliminate

[6] Recommendations for Amendments to the Labour Relations Code, Aug. 31, 2018, pg. 26.

secondary picketing restrictions unless the *Code* will also be amended to eliminate replacement worker prohibitions. The elimination of only one of these elements will certainly and very negatively disrupt the element of balance of labour relations that exists in B.C.

Disrupting balance by removing very long-standing restrictions on secondary picketing will also operate counter to key aspects of s. 2 of the *Code*, particularly the duties to promote conditions favourable to the orderly, constructive and expeditious settlement of disputes (s. 2(e); the duty to minimize the effects of labour disputes on those not involved (s. 2(f)); and the duty to ensure that the public interest is protected during labour disputes (s. 2(g)).

Without any consultation and while the *Code* review was ongoing the government recently passed a *Code* amendment, Bill 9, that will allow for an expansion of secondary picketing and specifically for picketing to affect neutral third parties. The amendment means federal pickets can now effectively shut down provincial employers which will have no recourse to address the impact of the federal picket line. The change was implemented without consideration for balance or the fact that this amendment is inconsistent with the section 2 duty requiring the Board to apply the *Code* in a way that "(f) minimizes the effects of labour disputes on persons who are not involved in those disputes."

Business supports preserving current picketing regulations within the *Code*, which have hitherto contributed to labour relations stability and prosperity in the province. We also believe the Bill 9 amendment that allows for secondary picketing to affect neutral third parties should be withdrawn and abandoned. Provincial employers should not face secondary picketing and the risk of shut down from an unrelated federal labour dispute.

CONCLUSION

The business community is concerned by the limited time and scope for meaningful consultation on the *Code* review. The process mistakes of the 2018 review are being repeated. The signatory associations collectively urge the Panel to consider the need for balance in B.C.'s *Labour Relations Code* and prevention of any further pendulum swings and to be mindful of the significant changes that occurred in 2019 and 2022. Any further swing will invite future governments to implement changes to send the pendulum back in the other direction, risking a return to labour relations instability. Given the dismal state of B.C.'s economy, with almost no private sector job growth in the past four years, private sector investment falling, and real GDP per capita expected to still be lower in 2027 than in 2019, the province can ill-afford further changes to the *Code* that will destabilize the labour relations framework and undermine the business operating environment.

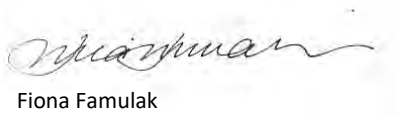
Regarding specific aspects the Panel may be considering:

- In respect of certification:
    - the *Code* should be amended to restore a secret-ballot vote to ensure employees' democratic rights to freely choose whether to be represented by a union; and

  - in the alternative that the secret-ballot vote is not restored, the 2019 changes to certification timelines and automatic certification rules (added only in the context of the then preserved secret ballot process) must be removed.

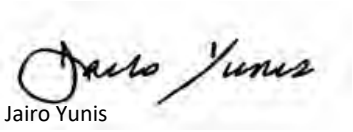
- Business opposes sectoral certification. Any consideration of introducing sectoral certification into the *Code* would be premature, absent focused and careful study and consultation and would upset the balance within the current *Code*.
- Business supports preserving current picketing regulations within the *Code*, which have contributed to labour relations stability in the province.
- The recent Bill 9 amendment should be withdrawn and abandoned.
- Finally, while strictly beyond the scope of the Panel's Review, we would like to raise the issue of the importance of ensuring labour stability in the province during the upcoming FIFA 2026 World Cup in Vancouver. The province is making a large investment in this event and the world will be watching.

Laura Jones
President and CEO
Business Council of British Columbia



Fiona Famulak
President and CEO
B.C. Chamber of Commerce

Bridgitte Anderson
President and CEO
Greater Vancouver Board of Trade



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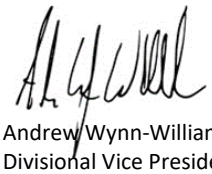
Director, British Columbia
and Western Economic Policy
Canadian Federation
of Independent Business

Ingrid Jarrett
President and CEO
British Columbia Hotel Association

Dave Earle
President and CEO
British Columbia Trucking
Association

Neil Moody
Chief Executive Officer
Canadian Home Builders
Association of British Columbia



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Divisional Vice President
Canadian Manufacturers &
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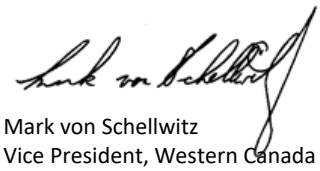

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February 29, 2024

Via email: lrcreview@gov.bc.ca

Dear Review Panel Members:

Re: Submission to the Labour Relations Code Review Panel

In response to the invitation extended on February 2, 2024 by the Labour Relations Code Review Panel appointed by the Minister of Labour, CSSEA is pleased to provide the following submissions for change to the *Code* and/or its Regulations.

CSSEA was established by the provincial government to coordinate collective bargaining and other human resource activities under the *Public Sector Employers Act* for a broad spectrum of publicly-funded community social services agencies who are unionized. CSSEA negotiates three provincial collective agreements in the sector, covering approximately 200 employers and close to 27,000 employees. CSSEA's membership continues to grow as more publicly funded agencies are unionized.

Section 18 and the Acquisition of Bargaining Rights

CSSEA takes no position at this time on the methodology of determining membership support for certification or certification variance, whether it be by card check or secret ballot vote. CSSEA supports employee rights to union representation being granted by the most effective means available to give effect to employees' true wishes to be unionized.

The Time Frame

Prior to the card check process being implemented under the *Code*, the timeline in which a hearing and vote had to occur was reduced from 10 days to 5 days from the date of application, to better ensure that any employer interference with employees' true wishes would be minimized. When the *Code* was subsequently changed from secret ballot vote to card check, this time frame was not adjusted. In the case of the card check methodology, where cards are signed before the application, the rationale for the reduced time line is no longer necessary. Yet, this short turn-around time has placed stressors on employer resources to provide payroll data and make decisions about the proposed scope of the bargaining unit within 24 hours as is often required by the Board. Arranging for available counsel for the pending hearing can also be challenging.

CSSEA submits that the timeline should return to the 10 day period, but that the Board be given the discretion to schedule an earlier hearing and voting date where it appears that the level of threshold support is insufficient for automatic certification or certification variance, and a secret ballot vote would need to be scheduled.

The Membership Card

If the card check process is to be continued, CSSEA submits that the Regulation should require union membership cards to clearly and prominently state that the signing of a card means that the employee is in favour of unionization at the employer and the Union representing them in collective bargaining. The Regulation already prescribes the wording for membership cards but we submit that there could be greater clarity. The language of Section 3(b) currently reads:

> In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining.

In our submission, it should read:

> By signing this membership card, I verify that I support the Union to represent me as my exclusive bargaining agent in collective bargaining, and that my signature has the same effect as casting a vote in favour of the Union being certified by the Labour Relations Board.

Section 104 – Expedited Arbitration

CSSEA agrees with the purposes behind Section 104 and supports the objective of labour relations disputes being resolved expeditiously.

However, in our sector, our collective agreements already provide for expedited arbitration processes akin to Section 104. They allow for a more streamlined, efficient and quick arbitration process, that includes efforts at mediation, and if not resolved, then a brief decision being issued in a short period of time. There is considerable overlap between these processes and Section 104.

In our submission, where collective agreements already have agreed upon dispute resolution processes akin to Section 104, the collective agreement provisions should prevail. We have found that some parties use Section 104 despite the collective agreement provisions, in an effort to duplicate arbitration processes and potentially use the statutory procedures as leverage for gaining a precedential decision without the exploration of the facts and case law commensurate with such important decisions. We don't believe that Section 104 was intended for this purpose. Rather, the full arbitration processes under the collective agreement are.

As a result, we submit that Section 104 should not apply where the collective agreement provides for similar expeditious dispute resolution processes. Further, the legislation should clearly state that when

a decision is issued under subsection (7) that the decision itself must state that it is issued under Section 104 of the *Code* and is not to be used as a precedent for deciding other disputes due to the abbreviated nature of the hearing process.

All of which is respectfully submitted.

Mark Slobin
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Direct Line: 604.601.3122

Submission of the Construction Labour Relations Association of British Columbia

to the

Labour Relations Code Review Committee

March 1, 2024

Introduction

The Construction Labour Relations Association of British Columbia (CLR) is an organization that was established in 1969 with the objective of bringing labour relations stability and security to contractors in British Columbia's unionized construction sector. Over 50 years later, CLR continues to provide a unified voice for contractors in negotiations with the building trades unions (the "Building Trades") that is essential to the maintenance of industrial stability.

CLR provides this submission to the Committee on behalf of its member companies. It identifies matters that are within the Committee's mandate to review the *Labour Relations Code* (the "*Code*") and make recommendations for amendments thereto.

Background

Since 1978's Inquiry Regarding the Structure of Bargaining by Building Trades Unions, [1978] C.L.R.A.B.R. 202, the structure and processes of collective bargaining between CLR and the Building Trades have been reviewed and revised in the pursuit of producing a state of affairs that will maintain industrial stability by ensuring that contractors remain competitive and their employees receive fair compensation for their labour.

Generally speaking, these revisions have been effective. Indeed, the industry has not had a labour dispute in over thirty years. Of course, this does not mean that there is no room for improvement. At the same time, however, those with the authority to initiate change must be careful not to do so unnecessarily.

The last review of the *Code* was conducted in 2018 (the "2018 Review"). While CLR did not agree with every recommendation in the 2018 Review, it welcomed the 2018 Committee's reticence to recommend multiple significant changes to the *Code*. For example, while the 2018 Committee recommended both that the time-frame for a certification vote under Section 24(2) be reduced from ten to five days following an application for certification (Recommendation No. 6), and that membership card evidence be valid for a period of six months rather than 90 days (Recommendation No. 8), it recommended that the secret ballot vote be retained rather than

reinstating the card check system (Recommendation No. 5). The *Code* changes that resulted from this review ultimately passed the Legislature with all-party approval based on the balanced and measured approach of the Review Committee. Unfortunately, the Provincial Government ultimately ignored Recommendation No. 5 and, in 2022, reinstated the card check system in addition to the reduction in the time-frame for certification votes from ten to five days..

Of course, any action the Provincial Government may take in response to this Committee's recommendations for the *Code* are outside of the Committee's control. Nevertheless, it is CLR's position that, subject to the limited recommendations outlined in this submission, the current *Code* is working well for both labour and management. As such, CLR believes that in the best interest of labour and management, this Committee should refrain from making any recommendations that could upset the delicate balance that the current *Code* provides.

Recommendations

Definition of "Strike"

In the recent decision in *Vancouver Shipyards Co. Ltd.*, 2022 BCLRB 146, a Reconsideration Panel of the Board held that the phrase that "picketing that is permitted under this *Code*" in the definition of "strike" under Section 1 of the *Code* does not include federal picket lines. The Reconsideration Panel held, correctly in CLR's opinion, that to treat all picketing not expressly prohibited by the *Code* as permissible would mean the Board would be unable to regulate a work stoppage by provincially-regulated employees where the work stoppage resulted from employees choosing to honour a non-Code (i.e. federal) picket line.

We suspect that the Committee will receive multiple submissions recommending that the *Code* definition of "strike" be amended to permit provincially-regulated employees to lawfully refuse to cross federal picket lines. However, the history and purpose behind the current definition of "strike" and the policy reasons upon which it is based should give this Committee pause before making any such recommendation on to the Provincial Government.

The definition of "strike" was changed to (substantially) its current form in *Code* amendments made in 1984. The amendment to the definition partly arose out of concerns raised by the International Woodworkers Association (the "IWA"). At that time the federally-regulated Telus Workers' Union (the "TWU") were on strike with BC Telephone Co. and were picketing businesses at which TWU installers had installed switchboards. This resulted in many IWA members being without work as they honoured the federal picket line.

As the Reconsideration Panel in *Vancouver Shipyards Co. Ltd.*, *supra* noted, the definition of "strike" involves a consideration of two important but competing policy considerations: (1) the labour movement's right to honour a picket line; and (2) the Board's duty to minimize labour disputes on unrelated third parties. The Reconsideration Panel ultimately held that the proper interpretation was the latter as it was harmonious with the scheme and objects of the *Code*. If the Board has duty to minimize the effect of labour disputes on unrelated parties, then the definition's exemption for pickets must be limited to picketing which the Board has the constitutional authority to regulate.

CLR member companies are frequently contracted to work on projects for federally-regulated companies. Consequently, CLR recommends that this Committee not make any recommendation to amend the definition of "strike" which would have the effect of permitting provincially-regulated employees to refuse to cross a federal picket line.

Section 41

It goes without saying that stability in the building trades industry is a necessity for British Columbia. The foundation for this stability is Section 41.1 of the *Code* and the maintenance of the Bargaining Council as a council of trade unions established, authorized and compelled under Section 41 to bargain on behalf of the Building Trades with CLR. This compulsory legal relationship must be protected, as it is not hyperbole to suggest that any threat to the relationship is a threat to the industry's stability. Thus, the building trades' obligation to be bound together for the purposes of collective bargaining with CLR must be zealously protected.

In our submission to 2018 Committee, we noted that Section 41.1(3) provides for an ongoing review of the Bargaining Council's Constitution and By-laws in order to ensure that they facilitate the industrial stability that the creation of the Bargaining Council was intended to produce and maintain.

In BCLRB No. B91/2017 (the "PCA Decision"), the Board held that the Bargaining Council has the authority to negotiate Project Collective Agreements (PCAs), also referred to as Project Labour Agreements ("PLAs"), which bind its members based on majoritarian principles. However, there have been a number of exclusionary "coalitions" formed for the purpose of negotiating PCAs. The PCAs negotiated by these coalitions have excluded Bargaining Council members from projects and, thus, increased inter-trade instability. It is also inconsistent with the objectives of the *Code* as set out at Section 2, particularly that of fostering employment of workers in economically viable business and encouraging 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.

The collective agreements negotiated by CLR and the Bargaining Council are utilized as the benchmark from which these PCAs are negotiated. As these negotiations are a product of CLR's expertise and are funded by dues received from CLR members, there is an obvious unfairness in using these collective agreements without any compensation to CLR. It also undermines CLR's role in the negotiation process with the Bargaining Council and its members, potentially increasing instability and tensions between the Building Trades.

To combat this scenario, CLR recommends that Section 41.1(2) be amended to provide that CLR is the exclusive employer bargaining agent with the sole authority to bargain PCAs/PLAs with the members of the Bargaining Council. Centralized employer-side representation during negotiations of PLAs will alleviate the potential for "whipsawing" and friction between the Building Trades. It will also ensure consistent interpretations as work on individual projects proceeds and provide consistency over a range of major infrastructure projects and ensure the highest prospect of success of PCAs.

The Relationship between CMAW and BCRCC

In *United Brotherhood of Carpenters and Joiners of America,* BCLRB No. B277/2007, CMAW and BCRCC reached agreement relating to the sharing of the craft of carpentry. One of the terms of that settlement agreement, which the Board recommended and approved, was that neither union would be permitted to raid the other "on a craft basis".

The introduction of CMAW and BCRCC within a single craft upset the traditional model for bargaining in the building trades industry where signatory contractors normally have access to skilled workers through a single bargaining unit. In fact, in *CLRA*, BCLRB No. B135/2015, the Board reiterated that it is presumed that the very existence of two rival unions sharing a craft leads to instability. This presumption led the Board to reserve to itself the ongoing authority to supervise CMAW and BCRCC's sharing of the carpentry craft. Despite this oversight, the sharing of the craft has created a situation in which contractors have had difficulty obtaining the skilled carpenters necessary to work on their projects, thus, effecting their competitive positions.

This situation cannot be allowed to continue. An agreement between two rival parties should not prevent employees from using the raid provisions of the *Code* to exercise their fundamental right to select the union they want to represent them. Accordingly, CLR recommends that the *Code* be amended to remove the restriction on raids between CMAW and BCRCC so that employees may choose which of the two competing organizations they wish to belong to.

Jurisdictional Assignment Plan

The Jurisdictional Assignment Plan ("JAplan") provides a unique domestic mechanism for the resolution of jurisdictional disputes between the Building Trades in British Columbia. Prior to its formation in 1978, jurisdictional disputes were a frequent source of work stoppages by the Building Trades. The introduction of the JAplan has, to a great extent, relegated such disputes to the dustbin of history. Indeed, the JAplan is now so entrenched as a part of the framework of the industry that it has been recognized by the LRB as a board of arbitration under the *Code*.

Regrettably, the effectiveness of the JAplan is presently being undermined by the existence of a Canadian jurisdictional assignment plan. This has created a situation where parties can ”forum shop” and, in some circumstances, circumvent the JAplan entirely.

It would be truly unfortunate if the Canadian jurisdictional assignment plan was to render one of the industry’s most successful initiatives an “option”. To prevent this from happening, CLR recommends that the *Code* be amended to provide that the only recourse from a JAplan decision, including recourse by way of reconsideration or appeal, is to the Labour Relations Board. There ought not to be an additional, ancillary avenue which is not subject to the *Code*.

CONSTRUCTION MAINTENANCE AND ALLIED WORKERS CANADA

VIA EMAIL
lrcreview@gov.bc.ca

Labour Relations Board
600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Labour Relations Code Review Panel

Greetings,

Re: Submissions of Construction, Maintenance and Allied Workers Canada for the 2024 Review of the *Labour Relations Code*, RSBC 1996, c244;

1. Introduction

1.1 This paper outlines the concerns of the Construction Maintenance and Allied Workers Canada ("CMAW") regarding current labour legislation in British Columbia ("BC") from the perspective of construction unions and workers. Its purpose is to identify the main areas of the *Labour Relations Code*, RSBC 1996, c244 (the "*Code*") for which change is required.

1.2 As stakeholders, who are deeply invested in the vitality and sustainability of the construction industry, CMAW and its constituent locals, present this paper to advocate for certain reforms to labour relations legislation.

1.3 The construction sector stands as a cornerstone of economic development, infrastructure advancement, and community prosperity. However, the efficacy of this vital industry hinges significantly upon the regulatory framework governing labour relations.

1.4 Over the years, the construction landscape has evolved in response to technological advancements, changing demographics, and shifting market dynamics. Yet, amidst these transformations, the legislative landscape governing labour relations has remained relatively stagnant, failing to adequately address the evolving needs and challenges faced by workers and employers alike.

1.5 In this context, our proposal seeks to address critical deficiencies within the *Code* while also fostering an environment conducive to sustained growth, innovation, and prosperity within the construction industry.

1.6 The proposals outlined herein are not merely reactionary but represent a proactive and strategic approach to modernizing labour laws in alignment with the realities of the contemporary construction workforce. We believe that by enacting comprehensive reforms, we can enhance worker protections, promote fair and equitable practices, and cultivate a more conducive environment for collaborative and sustainable development within the construction sector.

1.7 In conclusion, we urge the Review Panel to consider the proposals presented in this paper with earnest attention and commitment. By embracing progressive reforms, we can lay the groundwork for a construction industry that not only thrives economically but also upholds the values of fairness, safety, and dignity for all workers. Together, let us fortify the foundations of construction labour relations and pave the way for a brighter and more prosperous future.

1.8 Based on the foregoing, CMAW proposes the following amendments to be made to the *Code*:

(a) mandatory requirements for unions to file with the Labour Relations Board (the "Board") a copy of their constitution and bylaws and list of officers, and address for delivery prior to filing an application for certification and on an annual basis thereafter.
(b) the imposition of a reverse onus on employers in common employer applications;
(c) creation of a priority system for conflicting bargaining rights in cases of double-breasting; and
(d) the imposition of a reverse onus on employers in successorship applications.

2. Imposition of Mandatory Filing Requirements for Trade Unions

2.1 Requiring trade unions to file their constitutional documents, including their bylaws, a list of their officers, and an address for delivery to the Board serves many important purposes.

2.2 First, it promotes transparency that allows members, employers, and the public to understand the organizational structure, decision-making processes, and rules governing the union's operations.

2.3 Transparency also enables workers to make more informed decisions about their preference for collective representation. Providing timely information regarding the operations of unions allows potential and existing members to more accurately assess which organization they would choose as the exclusive bargaining agent of their choice.

2.4 Second, the filing requirements will provide the Board with an opportunity, before an application for certification is filed, to review and consider whether an applicant meets the definition of a trade union under the *Code* and whether it is an organization capable of representing members of the bargaining unit.

2.5 Further, these filing requirements lead to and are essential for accountability. Making information about a trade union publicly accessible to members and interested parties allows for a determination of the appropriateness, effectiveness, and efficacy of a trade union.

2.6 Third, public disclosure is important because it enables union members, unionized employees, and the general public to have access to timely, high-quality information about a trade union's activities. This issue is particularly paramount in a situation where a trade union or employee association is newly established.

2.7 Fourth, requiring the submission of union constitutions and bylaws, as well as information about the union's officers, supports democratic practices within the organization. Members can have a better understanding of how leaders are elected, how decisions are made, and how the union functions overall. This transparency enhances the democratic principles within the union.

2.8 While there are many benefits in requiring the filing of union constitutions and bylaws with the Board, we recognize the importance of striking a balance to avoid unnecessary bureaucracy. Therefore, the process should be straightforward and not overly burdensome on unions, ensuring that the advantages of transparency and accountability are achieved without impeding the efficient functioning of labour organizations.

2.9 In this regard, we propose amendments similar to the ones found in section 24 of the Alberta *Labour Relations Code*, RSA 2000, c L-1 (the "*AB Code*").

2.10 Section 24 of the *AB Code* requires trade unions to file with the Alberta Labour Relations Board a copy of the following documents as soon as possible after a change is made:

(a) a copy of its constitution, bylaws, or other constitutional documents; and
(b) the names and addresses of its president, secretary, officers and other organizers and the names of its officers who are authorized to sign a collective agreement.

2.11 In addition to the requirements set out in section 24 of the *AB Code*, we also recommend including the following additional filing requirements for further transparency:

(a) a statement indicating whether the trade union is an international, national, or provincial organization; and

(b) where the union is a local branch of an international, national, or provincial organization, a statement showing the name and address of the parent organization, together with a copy of the local branch charter and local branch general bylaws.

3. Amendments to Address Double-Breasting in the Construction Industry

3.1 A labour relations framework that allows enterprises to easily establish, terminate, or manipulate bargaining relationships contradicts the fundamental right of employees to participate in collective bargaining through freely chosen trade union representatives.

3.2 If corporate strategies aimed at avoiding unions are accepted and promoted, they are likely to be exploited. Inevitably, if influential entities within an industry discover methods to evade their commitments to collective bargaining and are perceived to gain a competitive edge as a result, others will likely emulate their actions.

3.3 That is precisely why double-breasting in the construction industry is so problematic.

3.4 In effect, double-breasting permits several companies, overseen by identical individuals or a corporate parent company, to organize themselves in a manner where one functions as a "union" entity and another as "non-union", or in some cases operate through an “accommodationist union” or “company union” such as the Christian Labour Association of Canada (“CLAC”).

3.5 We pause here to acknowledge that many unions, at times, accommodate employers in their bargaining relationship by, for instance, limiting their monetary asks to job creation. However, CLAC and organizations like it have embraced a more extreme form of accommodations where all conflicts with the employer are avoided and, instead, the organization openly and actively seeks collaboration with the employer. Unsurprisingly, the accommodations such organizations provide to employers come at the expense of undermining the workers’ rights. We have utilized the term “accommodationist union” to refer to such organizations that implement the extreme form of employer accommodation referenced above.

3.6 Focusing back on the issue of double-breasting, traditionally, it occurs when a contractor, who is bound by one or more collective agreements, establishes another company in the same area of work, which is not similarly bound.

3.7 For ease of reference, for the remainder of our submissions, we will refer to a contractor's original unionized operations as the "First Enterprise" and the related entity that is not bound to a similar collective agreement as the "Second Enterprise".

3.8 The contractor's primary motivation for establishing the Second Enterprise is to enable it to successfully bid on jobs at a lower cost. Because of higher labour costs typically associated with a collective agreement, the First Enterprise will almost always be underbid for the same jobs.

3.9 If the contractor is successful in its double-breasting attempt, it will enjoy the best of both worlds. Its unionized operation, i.e., the First Enterprise, can continue to bid on jobs requiring union contractors. Meanwhile, its non-unionized operation can competitively bid on other jobs that do not require the contractor to have a unionized workforce.

3.10 Alternatively, and as we explain in more detail below, the contractor's Second Enterprise may be subject to a "wall-to-wall" voluntary recognition agreement with an "accommodationist union" hand-picked by the contractor. In such cases, the contractor effectively enters into a sweetheart deal well before any employees are hired into the bargaining unit, meaning the members of the bargaining unit have not had any input concerning the terms of the agreement or the selection of the union charged with representing their interests.

3.11 Regardless of how the contractor structures its double-breasting arrangement, the ultimate outcome is highly corrosive to the rights of the workers employed with the contractor. The arrangement effectively nullifies the bargaining rights secured by the workers and the craft unions with the contractors' First Enterprise, resulting in tangible losses for those unionized employees.

3.12 Regardless of whether the Second Enterprise remains non-unionized or is subject to a sweetheart deal, workers employed with the Second Enterprise suffer as well. Those workers are guaranteed to receive wages and benefits that are below industry standards and will be unable to receive effective union representation or any representation at all.

3.13 The problem is compounded by the fact that the craft unions have limited options in dealing with double-breasting in the construction industry. The only option available under the *Code* is for the craft union working with the First Enterprise to seek a common employer declaration.

3.14 In British Columbia, section 38 of the *Code* provides the Board with the discretion to treat two or more entities as constituting one employer for the purposes of the *Code*, provided certain statutory requirements are met. More specifically, the craft union will have to prove to the Board that:

(a) two or more entities are carrying on business;
(b) the entities are under common control or direction;
(c) the entities are engaged in a related or associated activity; and
(d) there is a valid labour relations purpose to be served by making a common employer declaration.

3.15 Section 38 of the *Code* provides unions and workers some protection against having their bargaining rights nullified through double-breasting. However, it is our considered opinion that the measures provided under the *Code* do not go far enough, particularly, in light of recent trends in double-breasting. It is only through additional amendments to the *Code* that greater protection can be afforded to unions and workers' bargaining rights when dealing with problematic issues of double-breasting in the construction industry.

A. Imposing a Reverse Onus on Contractors Engaging in Double-Breasting

3.16 Common Employer litigation can be prohibitively expensive and contentious. This is largely due to the freedom granted to enterprises to keep their strategies confidential, placing the burden on unions to substantiate the statutory requirements of common control, direction, and associated or related activities. Respondent companies are not obligated to disclose any information regarding corporate interconnections, financial control, or other relevant details.

3.17 Under the Board's current process, unions can attempt to compel the production of relevant and material documents and records. However, in the majority of cases (if not all of them), the union's request for the production of records is objected to by the responding parties on the basis that the union is engaging in a "fishing expedition" or that the request is overly broad. The Board frequently dismisses such objections as "baseless." Notwithstanding, the lack of an onus to at least disclose relevant information means that unions are routinely accused of acting based on mere "suspicions", even when these suspicions are justified.

3.18 Implementing a reverse onus that would require the respondent companies to produce records that establish the basic nature of their relationship is neither onerous nor detrimental to the respondent companies' interest. The only interest that may be at play in such cases is the double-breasting companies' desire not to get caught. Such an interest is not deserving of protection under the law.

3.19 Implementing a reverse onus through legislation, placing the responsibility on entities accused of being under common control and direction and involved in associated or related activities, would be a straightforward solution to the problem.

3.20 In practical terms, such a change would eliminate the current incentive to withhold relevant information. The statutory prerequisites would only be a concern in cases where a legitimate question arises as to the relationship between the respondent companies. Furthermore, this shift would lead to parties focusing on presenting arguments related to the merit of the application instead of dealing with preliminary issues like the production of documents, resulting in significant time and resource savings for all stakeholders.

3.21 One example of a jurisdiction that imposes a reverse onus on employers is Saskatchewan where the relevant provision reads as follows:[1]

> **Spin-off corporations**
>
> 6-79(1) On the application of an employer or a union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes of this Part if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.
>
> (2) In exercising its authority pursuant to subsection (1), the board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.
>
> (3) The effect of a declaration pursuant to subsection (1) is that the corporations, partnerships, individuals and associations, on and after the date of the declaration:
> (a) constitute a unionized employer in the appropriate trade division;
> (b) are bound by a designation of a representative employers' organization; and
> (c) are bound by the collective agreement in effect in the trade division.
>
> (4) The board may make an order granting any additional relief that it considers appropriate if:
> (a) the board makes a declaration pursuant to subsection (1); and
> (b) in the opinion of the board, the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for the purpose of avoiding:
> (i) the effect of a determination of a representative employers' organization with respect to a trade division; or

[1] See *The Saskatchewan Employment Act*, SS 2013, c S-15.1, s 6-79.

(ii) a collective agreement that is in effect or that may come into effect between the representative employers' organization and a union.

(5) For the purposes of subsection (4), the burden of proof that the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for a purpose other than a purpose set out in subclause (4)(b)(i) or (ii) is on the corporation, partnership, individual or association.

(6) An order pursuant to subsection (4) may be made effective from a day that is not earlier than the date of the application to the board pursuant to subsection (1).

[emphasis added]

B. Rights of Certified Trade Unions Should Trump Rights of Voluntary Recognized Union when Double-Breasting Occurs

3.22 A recent double-breasting trend observed is where the contractor's Second Enterprise enters into a "wall-to-wall" voluntary recognition agreement with an "accommodationist union" or "company union" instead of remaining non-unionized.

3.23 This scenario has become particularly prevalent in the construction industry where the contractors' bargaining structure is organized along craft lines. In such cases, the contractor's primary operation may have more than one collective agreement, one with each craft union that it works with.

3.24 The contractor then creates a Second Enterprise that provides similar or identical services to its First Enterprise. However, to avoid its obligations under the craft collective agreement(s), the contractor enters into a "wall-to-wall" voluntary recognition agreement with an "accommodationist union" of its choice. The agreement is effectively a sweetheart deal with the sole purpose of being advantageous to the contractor while significantly compromising on workers' rights.

3.25 The detrimental effects of double-breasting are widely recognized in the situation where the contractor's Second Enterprise remains non-unionized. In our submission, the impact on workers' rights is just as determinantal in the situation described above, where the Second Enterprise enters into a sweetheart deal with an "accommodationist union". To fully comprehend the situation, we have to address why "accommodationist unions" are detrimental to the labour movement. Then, we address the outcome of this recent trend on the erosion of the bargaining rights of workers represented by craft unions.

3.26 Parenthetically, we would like to add that our criticism of "sweetheart deals" struck between "accommodationist unions" and double-breasting employers is intended to apply to the specific double-breasting situation identified in our submissions. More specifically, we are not criticizing the general practice of voluntary recognition agreements between unions and employers in the construction industry, as this is a well-accepted practice and, in some cases, may even include an all-employee bargaining unit.

I. The Problem with Accommodationist Organizations

3.27 Accommodationist unions stand opposed to almost everything that the labour movement values.

3.28 The general view among legitimate trade unions is that such organizations' primary goal is to undercut the work of legitimate, democratic and truly representative unions, and to reverse the gains made over decades. Such organizations engage in this conduct all in the name of creating a positive relationship with anti-union employers, who are eager to keep real unions out.

3.29 In a 2017 labour research study by York University, CLAC was recognized as an accommodationist union that negotiates wages and benefits below industry standards to prevent certifications by legitimate craft unions.[2] Due to its willingness to negotiate wages that are well below industry standards, and its explicit commitment to avoid strikes at all costs, CLAC has also been labelled a "company union" (i.e., a union that is created, controlled, or otherwise influenced by the employer which responds to its employers' interest rather than those of the workers).

3.30 While CLAC has been widely recognized as the main "accommodationist union" or "company union" in Canada, more and more organizations like CLAC have arisen recently. One example is the United Workers Group ("UWG"), an organization that was recently established by, and is closely associated with, the United Brotherhood of Carpenters and Joiners of America ("UBCJA").

3.31 In recent years, the UBCJA, directly and indirectly (through organizations like the UWG), has been actively engaging in the type of conduct for which CLAC has been widely criticized, both in British Columbia and in Alberta. So much so that the Executive Director of the Building Trades Alberta ("BTA") penned an open letter to the General President of the UBCJA regarding the detrimental impact the "wall-to-

[2] Tufts, S, & Thomas, M, *The Christian Labour Association of Canada (CLAC): Between Company and Populist Unionism*, Labour / Le Travail, 80, 55–79, online: <https://www.lltjournal.ca/index.php/llt/article/view/5868/6728>

wall" organizing approach implemented by the UBCJA (and UWG by extension) was having on the labour organizing movement within the construction industry.

3.32 As outlined in the BTA's letter, the UBCJA has been entering into agreements with contractors, similar to CLAC, that result in employees being dispatched for work "at lower rates, less pension, no long-term collective agreements, and limited representation".

3.33 Therefore, the problem arising from double-breasting contractors entering into "sweetheart deals" is not just limited to CLAC, but seems to be expanding through the establishment of similar organizations.

II. The Detrimental Impact on Craft Union Bargaining Rights Resulting from Sweetheart Deals in Double-Breasting Situations

3.34 It is our view that a sweetheart deal between a contractor's Second Enterprise and an "accommodationist union" effectively insulates the Second Enterprise against a common employer declaration under section 38 of the *Code*.

3.35 In the majority of the cases, such an arrangement will prevent the Second Enterprise from becoming subject to the bargaining relationships by which the First Enterprise is bound, notwithstanding that the sweetheart deal entered into by the Second Enterprise in the majority, if not all of the cases, has the effect of eroding the rights of the certified craft unions dealing with the First Enterprise, as well as the rights of the workers employed with the Second Enterprise.

3.36 Below we explain how this outcome comes about.

3.37 In response to a section 38 application, the contractor can simply argue that even if the Second Enterprise is performing work that is related to or similar to that being performed by the First Enterprise, that work is subject to the representational rights secured by the voluntary recognition agreement. Therefore, granting a remedy to the craft union of the First Enterprise, by extending its representational rights to the workers of the Second Enterprise, would interfere with the representation rights secured through the voluntary recognition agreement.

3.38 In such circumstances, the Board has held that it should have regard to competing representation rights in deciding whether there is a labour relations purpose to be met by issuing the common employer declaration.[3]

[3] *Ansan Industries Ltd*, BCLRB No B1/2011, at para 89.

3.39 The Board has further stated that it will only make a section 38 declaration if it is satisfied that the real or potential harm to representation rights, as it may exist in the absence of a common employer declaration, outweighs the real or potential harm to representation rights that would result if the Board granted a common employer declaration. In making that determination, one of the factors the Board considers is whether there is any evidence of an intention to avoid collective agreement obligations.[4]

3.40 However, such analysis ignores three important factors.

3.41 Firstly, the representational rights achieved by the "accommodationist union" that has a sweetheart deal with the Second Enterprise are often secured without any employee input, and without the majority of the employees having chosen the organization as their exclusive bargaining agent.

3.42 Secondly, it ignores the significant difficulties craft unions face in being required to establish intent by the contractor to avoid its collective agreement obligations in order to secure a common employer declaration from the Board.

3.43 Intent is a subjective state of mind that is highly challenging to prove. In the majority of cases, there is a lack of direct evidence explicitly demonstrating the contractor's intent and, while intent may be inferred from circumstantial evidence, it is almost an impossible task for unions to gather sufficient circumstantial evidence to prove the contractors' intent definitively.

3.44 Given the high evidentiary threshold that has to be met by craft unions subjected to double-breasting, it is not surprising that the Board has refused to make a common employer declaration where there are competing representation rights, and the craft union is unable to establish intent by the contractor to avoid its collective bargaining obligations.[5]

3.45 Thirdly, such analysis leaves no room for the Board to consider whether the representation rights that the Second Enterprise has granted to the union of its choice were subsequently approved or ratified by the employees.

3.46 As a result, craft unions whose representational rights have been legitimized through the certification process are left without any effective remedy in a circumstance where a contractor engages in double-breasting but has insulated itself against a common employer declaration by entering into a sweetheart deal with a shell of a trade union.

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[4] *Brock Canada West Ltd*, 2020 BCLRB 55, at para 42.
[5] See *Brock West*, supra

3.47 In such a situation, workers of both the First Enterprise and the Second Enterprise are detrimentally impacted as a direct result. The workers of the craft unions employed with the First Enterprise suffer as the work that otherwise would have been performed by them under their craft collective agreement is transferred to the Second Enterprise. The workers of the Second Enterprise also suffer because they perform the same work while being paid significantly less and receiving benefits that are well below industry standards.

III. The Proposed Solution

3.48 To resolve the problem outlined above, we propose an amendment to section 38 of the *Code* that assigns higher priority to representation rights secured through certification over those secured through a voluntary recognition agreement, when competing representation rights become an issue in making a common employer declaration.

3.49 One means of implementing our proposed amendment is include express language that requires the Board to apply its well-established framework for determining whether a voluntary recognition agreement constitutes a "collective agreement" under the *Code* before it considers the contractor's Second Enterprise to be "unionized" or that competing representational rights exist. Such analysis would allow the Board to determine whether the representation rights established through the voluntary recognition agreement meet the necessary level of employee support or whether it simply constitutes a sweetheart deal entered into by the employer and the union, without any employee choice or input.

3.50 If the Board finds that the voluntary recognition agreement is a "collective agreement" under the *Code* or Second Enterprise was legitimately organized through the certification process under the *Code,* there is no negative impact on any of the parties. Accordigly, the Board would proceed with its balance of interest analysis in assessing the competing representation rights, while all parties involved are assured that the competing representational rights were secured through employee choice.

3.51 On the other hand, if the Board finds that the voluntary recognition is not a "collective agreement" under the *Code*, the Second Enterprise's operations will be deemed to be "non-unionized" and, if a labour relations purpose exists, the craft union's rights will be appropriately extended to the Second Enterprise.

3.52 Therefore, such an amendment would deter contractors from entering into sweetheart deals with "accommodationist unions" as a means of avoiding their collective bargaining obligations under the craft agreements already in place for their First Enterprise.

3.53 It would also mean that the Second Enterprise is not unfairly insulated from a common employer declaration under the *Code* when its actions, for all intents and purposes, constitute double-breasting.

4. Reverse Onus for Employers in Successorship Applications

4.1 As noted earlier, in common employer applications, unions, as applicants, bear the onus of proof, notwithstanding that the employer possesses all the relevant information about how their organization operates. The same is also true in successorship applications.

4.2 For all the same reasons outlined in our submissions in paragraphs 3.16 to 3.21, CMAW also proposes that the successorship provisions of the *Code* be amended to impose a reverse onus for employers involved in successorship applications.

4.3 In summary, the purpose of the successorship provision in the *Code* is to ensure that the right of employees to choose their union is not curtailed by the employer through reorganizing its operations to move work to a non-union side of the operation and then closing down or limiting the work available to union members. To achieve the legislative purpose, it makes sense for employers to be required to share the information to which only they have access. The existing system incentivizes employers not to share relevant information and makes what should be straightforward processes prohibitively expensive and cumbersome.

4.4 One example of a jurisdiction that imposes a reverse onus in successorship applications is the Province of Manitoba where the relevant provision reads as follows:[6]

> **Duty on parties to alleged sale**
>
> 57 Where, on an application made under section 56 or in any other proceeding before the board, a union alleges that a sale of a business has occurred, **the parties involved in the alleged sale shall adduce at the hearing all facts within their knowledge which are material to the allegation**.
>
> **[emphasis added]**

[6] *The Labour Relations Act*, CCSM c L10, s 57.

5. Amendments to the Definition of "Strike"

5.1 In the 2022 decision of *Vancouver Shipyards Co Ltd v Construction, Maintenance and Allied Workers Bargaining Council, Local 506*, 2022 BCLRB 146 ("Vancouver Shipyards"), the reconsideration panel of the Board held that provincially regulated union members could not refuse to cross a federally regulated picket line.

5.2 The Board's finding in *Vancouver Shipyard* was based on the definition of "Strike" provided in the *Code* which the Board interpreted to mean that the legislature intended to only create an exception in the definition of strike for picketing that was provincially regulated. Based on this finding, the Board found that by refusing to cross a federally regulated union's picket line, members of multiple unions had engaged in an illegal strike.

5.3 We submit that the legal precedent set by the *Vancouver Shipyard* decision is highly prejudicial towards worker rights and is contrary to the longstanding and widely held understanding in the labour relations community in British Columbia that honouring a picket line does not, in and of itself, constitute a strike.[7]

5.4 We submit that the view expressed by Professor Paul Weiler in *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto: Carswell, 1980), aptly highlights the problems resulting from the current interpretations of the term "Strike" that arise from the current language in the *Code*:

> One tack that the law might take is to hold that if employees honour a picket line if they refuse to cross it in order to go to work, they are thereby guilty of an illegal strike. That has never been the view of British or American law, but there are labour boards and courts which have so interpreted Canadian legislation. **Undoubtedly such a wholesale legal ban can blunt the effectiveness of union picketing, whatever the reason for it**. Yet I have always found that interpretation more than passing strange. On the one hand, the law holds out to unions the right to picket at certain times and places, that is, the right to persuade employees not to report to for work. On the other hand, that same law is read as telling these workers that if they are persuaded not to go to work, if they choose to adhere to that fundamental tenet of the trade union ethic, they put themselves beyond the legal pale of the wider community. **In British Columbia at least, we are satisfied that this legal policy would be perceived (rightly I believe) as totally unfair and likely to discredit any institution which tried seriously to enforce it. Our approach was strictly to delimit the legitimate use of the picket line – not to mount a frontal assault on those who are loathe to cross the line – a symptom of the problem.**
> (pp. 79-80)

[7] See *Vancouver Shipyard*, at para 83.

5.5 Currently, the *Code* defines "Strike" as follows:

> "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 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**,

5.6 The Board in *Vancouver Shipyards* held that the language "picketing that is permitted under the *Code*" had to be interpreted to mean that only picketing that is provincially regulated creates an exception to the definition of "Strike". The consequence of this conclusion is that provincially regulated employees who refuse to cross a federally regulated picket line would be deemed to be engaging in an illegal strike or work stoppage. This outcome, as Professor Weiler noted, is "totally unfair" and constitutes a "frontal assault" on employees who decide not to cross a picket line that has been legally established, albeit under federal legislation instead of a provincial one.

5.7 Accordingly, we submit that the definition of "Strike" in the *Code* should be amended to comply with the longstanding and widely held understanding in the labour relations community in British Columbia that honouring a picket line, regardless of whether it has been established under provincial regulations or federal ones, does not constitute an illegal strike.

5.8 To achieve this, we propose the following amendment to the definition of "Strike" provided in the *Code*:

> "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 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 permitted by the laws of Canada**.

6. Conclusion

6.1 Double-breasting has become an all-too-common problem in the construction industry. With the recent trends in establishing secondary operations that have entered into "sweetheart deals" with accommodationist unions, the rights of workers being represented by craft trade unions are being slowly eroded, without any meaningful remedy currently available to them under the *Code*.

6.2 In our submission, at least two amendments should be made to the *Code* to protect workers' rights in craft bargaining units, deter the implementation of union-avoidance tactics by construction industry employers, and address the issue of contractors insulating themselves from a common employer declaration by striking sweetheart deals with "company unions".

6.3 First, the *Code* should be amended to include a reverse onus provision under section 38 of the *Code* requiring respondent companies to produce records that establish the basis and nature of their relationship.

6.4 Second, under section 38 of the *Code*, the Board should be granted the authority to assign priority to representation rights, secured through certification over those secured through voluntary recognition agreements when the issue of competing representation rights arises in the context of a common employer application.

6.5 In terms of other amendments to the *Code*, we also submit that:

(a) a reverse onus provision should also be included in the successorship provisions of the *Code*;

(b) the *Code* should be amended to require trade unions to file their constitutional documents and information about their officers with the Board; and

(c) the definition of "Strike" should be amended to permit employees to honour picket lines established under both the *Code* and federal regulation.

6.6 Finally, CMAW and its constituent locals wish to attend the following public hearings to make oral presentations concerning the proposals contained in this document. CMAW will be attending the Vancouver in-person meeting, and our constituent locals will contact the Review Panel directly to advise of their respective attendance.

Yours truly,

Chis Wasilenchuk
President

Hi,

Recommendations from CUPE 1123 Okanagan Regional Library workers for the upcoming Labour Relations Code Review as follows:

Move forward on reconciliation with Indigenous peoples by:

Acknowledging Labour's commitment to reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration. Labour strongly believes that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.

Protecting Workers Rights by:

- Expanding successorship protection to all workplaces;
- Ensuring provincial workers are able to honour federal picket lines;
- Extending the freeze period until a first agreement is reached;
- Ensuring that remote or digital workers have the right to establish virtual picket lines, communicate about the strike with the public and that a virtual picket line has the same standing as any other picket line;
- Affirming that online platform workers are covered by the definition of employee in the Code and have the right to organize;
- Allowing secondary picketing at or near sites the struck employer is using to perform work, supply goods or furnish services that are substantially similar to those of the striking workers;
- Clarifying the definition of common employer to prohibit double breasting;
- Establishing a single-issue panel to examine the impact of artificial intelligence and automation on BC's workplaces; and
- Strengthening the language in section 54 to require a negotiated adjustment plan when an employer introduces a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees.

Improving Access to Collective Bargaining by:

- Establishing a single-issue panel to consult on implementing sectoral/broader-based bargaining to address BC's changing workplaces structures, high level of worker precarity and the barriers to unionization that continue to exist for too many workers;

· Promoting the successes of single step certification; and
· Providing access to employee lists where a union is able to demonstrate a threshold of 20% support of employees in the proposed unit.

Improving LRB processes by:
· Substantially increasing funding for the Board; and
· Improving timely access to LRB services and decisions.

Respectfully submitted,

CUPE 1123
Okanagan Regional Library Workers

CUPE BC
CANADIAN UNION OF PUBLIC EMPLOYEES BRITISH COLUMBIA

MODERNIZING THE BC LABOUR RELATIONS CODE:

Submission to the 2024 Labour Code Review Panel

About CUPE BC

CUPE BC represents more than 100,000 workers in British Columbia who deliver public services across a wide range of sectors including public and post-secondary education, childcare, community social services, community health, local government, transit, emergency services, and libraries.

We acknowledge that our province of British Columbia is located on the homelands of 203 distinct Indigenous nations and cultures; more than 30 different languages and close to 60 unique dialects are spoken in the province. We ask all participants to reflect, acknowledge and honour in their own way the First Nation land on which they are located.

CUPE BC
CANADIAN UNION OF PUBLIC EMPLOYEES **BRITISH COLUMBIA**

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COPE491

INTRODUCTION AND OVERVIEW

The Canadian Union of Public Employees, BC Division, represents over 100,000 members working in municipalities, schools, colleges, universities, libraries, health, emergency medical services, social services, and transportation. We welcome the opportunity to participate in the review of British Columbia's workplace laws, including the *Labour Relations Code*.

Minister Harry Bains appointed a three-member panel to review the BC *Labour Relations Code* (the "*Code*") in January of 2024. The panel is "tasked with consulting interest groups and Indigenous parties across the province, and reporting back to the Minister...with a report and recommendations for potential amendments" to the *Code*. This panel should continue the work of the 2018 Labour Code Review panel by restoring the historic balance sought when the *Code* was created, and our present model of modern labour relations was established. This balance was premised on labour stability by regulating strikes on the one hand, while facilitating unionization through the certification process on the other hand. Over the fifty years since the *Code's* inception that compromise between employers and labour has been eroded by governments intent on shifting power to employers and never fully restored under governments more attuned to the interests of working people.

The implementation of recommendations made by the Labour Code Review panel in 2018 resulted in a substantial move toward the historic balance referenced above, particularly the implementation of a single-step certification process and a return to limitations on employer speech as it relates to the workers' choice to certify a union. Single step certification significantly improved workers' ability to actualize their constitutionally-protected right to freely associate and join a union.

The present review should continue the positive work of restoring fairness in the *Code* and remove barriers that restrict workers from exercising their Charter right to access collective bargaining by recommending amendments to modernize the *Code* in a manner that recognizes the changing nature of workplaces and the increase of precarious employment.

Unions give workers an opportunity to negotiate for improvements to wages and conditions of employment. Unionized workers have greater job security, and better access to vacation, extended health benefits, pensions, and a host of other employment-based benefits. Higher-union-density jurisdictions see improvements for all workers, in part because all employers have to offer better terms and conditions to attract employees, and in part because a strong labour movement helps to raise legislated minimum standards. Barriers to unionization that exist in the *Code* ultimately drag down the standards for all workers in the province. Because unionization across the economy has broad implications for all workers, it is imperative that workers' right to access union certification and collective bargaining not be eroded because legislation is outpaced by the evolving nature of work and economy.

For well over a decade, work and workplaces have been rapidly changing, and that change has only accelerated since the *Code* review conducted in 2018. Increasingly, work is performed remotely, on either a part-time or full-time basis. It is common that workers for a single employer are spread across a wide geographic area. In some instance workers have little or no contact with each other and are rarely in the same physical location. Employment precarity has also risen dramatically, with more workers than ever employed by app-based employers such as ride hailing and food delivery services. Some of these employers have thousands of employees. These workers, by the very nature of their employment, have little to no ability to connect with each other to communicate effectively about something as basic as their workplace rights, and under the current *Code* provisions face systemic barriers to accessing collective bargaining.

The economy is increasingly characterized by the fracturing of work into small units, sometimes single workers, working for many employers within the same sector of the economy. While B.C.'s existing certification and bargaining mechanisms do not technically bar workers in these circumstances from forming a union and bargaining; the reality is that these workers cannot exercise their rights in a meaningful way.

This Panel should recognize these generational and technological shifts that shape work in our province and make recommendations for *Code* amendments that provide meaningful access to collective bargaining for all workers. This Panel should also consider the changed nature of the government's relationship with Indigenous people in British Columbia and the implications of the implementation of the Declaration on the Rights of Indigenous Peoples Act (the "Declaration Act").

The following are CUPE BC's recommendations for reforms to the *Code* to achieve these ends. We firmly believe that these recommendations are a step in the right direction to better align with present day realities. These changes, if adopted, will make a positive difference in the lives of working people by restoring balance in labour relations in our province.

We would like to highlight several areas that we are particularly concerned about, which we believe should be the first areas on which the government acts:

- Expand successor rights so that all unionized workers maintain their collective agreements and collective bargaining rights when work is contracted out and contracts are re-tendered to successive contractors.
- Amend provisions of the *Code* related to secondary and common site picketing so that they comply with the *Charter.*
- Extend the post-certification "statutory freeze" period until a first collective agreement is reached.
- Make recommendations that provide for multi-employer, sectoral certifications for traditionally difficult to organize sectors.

SUCCESSORSHIP RIGHTS

Successor rights are a necessary protection for workers and their unions. The practices of contracting out, contract retendering and cancellation undermine the democratic rights of workers to join and remain in unions and undermine collective bargaining. In cases of contracting out, unions lose bargaining rights and negotiated agreements, and workers lose their jobs. Successor rights help protect vulnerable workers.

Despite improvements made to the *Code* in 2019, workers continue to be vulnerable in a number of sectors that are regularly subjected to the practice of contracting out, such as residential and long-term care in the healthcare system. We support the broadest possible extension of successor rights. Any work that is covered by a collective agreement should be protected by successor rights provisions. Amendments to the *Code* in 2019 provided extended successorship protections to workers in particular sectors;

(a) building cleaning services;

(b) security services;

(c) bus transportation services;

(d) food services;

(e) non-clinical services provided in the health sector.

This extended successorship protection has been in place for a number of years now without issue, and has reasonably protected the hard-fought rights of workers. This protection should be provided to all unionized workers. This necessary expansion is achieved with relative ease, by removing the specification that the provision only applies to the above sectors.

When workers exercise their constitutional rights to freedom of association by joining a union, their rights should be maintained at their workplace. They should not lose their hard-fought rights through contract re-tendering or transfer of workers or work functions that fall outside the Board's interpretation of successorship provisions in the *Code*.

The only effective way to protect workers' bargaining rights is to guarantee that their union certification, their collective agreement, and their bargaining rights follow them when work is transferred from one company (or public sector organization) to another employer. The new employer will thus be responsible for upholding the terms and conditions of the collective agreement, and subsequently negotiating a new collective agreement upon its expiry. Access to fundamental democratic rights should not be overridden by loopholes that allow employers to avoid the application of the *Code* simply by structuring a transfer in a way that falls outside of existing provisions.

We recommend an extension of collective bargaining rights and collective agreements in cases in which work is contracted out or retendered; work or workers are transferred, and in all sale of business cases regardless of the form taken. These changes will bring considerable benefits to workers with minimal, if any, downside to employers. As the 2018 Code Review Panel reported, since B.C. has had successorship protection, businesses in B.C. are bought and sold regularly without any discernable negative implications despite the initial concerns of the business community.

As the 2018 Code Review Panel recommended, changes to the successorship language should be retroactive to the date of the Panel's Report to prevent contracts being cancelled to avoid the application of the extension of expanded successorship rights.

Furthermore, given that unions and workers do not have ready access to documentation required to establish successorships as this information is normally solely in the possession of employers and successorships can happen fairly quickly, we recommend that the *Code* be amended to place the evidentiary burden on employers, and require that they disclose all relevant documents, in cases where a successorship or common employer application is filed.

RECOMMENDATION 1: Amend successorship provisions so that the certification follows a transfer of workers and work to reflect the modern realities of contract tendering, retendering and cancelling, and modern forms of corporate transfer. Place the primary evidentiary burden on the employer when a successorship or common employer application is filed.

RECOMMENDED SUCCESSORSHIP LANGUAGE

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.

(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.

(2.1) [Not enacted.]

(2.2) If a contract for services is retendered and substantially similar services continue to be performed, in whole or in part, under the direction of another contractor,

(a) the contractor is bound by all proceedings under this Code before the date of the contract for services entered into by the contractor and the proceedings must continue as if no change had occurred, and

(b) any collective agreement in force continues to bind the contractor to the same extent as if it had been signed by the contractor.

(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 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.

(f) on an inquiry by the board into an application under this section, the employer bears the burden of proof to establish that no successorship has occurred.

COMPLIANCE WITH UNDRIP

In November of 2019 the historic *Declaration Act* came into effect in the province of British Columbia. One of the objectives of the *Act* is that the province's laws are brought into alignment with the UN Declaration on the Rights of Indigenous Peoples. CUPE BC supports the ongoing work towards reconciliation.

Section 3 of the *Declaration Act* requires that the province "in consultation and cooperation with Indigenous Peoples" take "all measures necessary" to ensure consistency between the laws of British Columbia and the United Nations Declaration on the Rights of Indigenous Peoples.

We trust that this commitment guides this Panel. However, we respectfully submit that that this is outside the current review's mandate, and in any event the review's timelines do not allow meaningful and good faith consultation with stakeholders in the labour relations community and Indigenous people. The panel should recommend that the province work with the Declaration Act Secretariat to review the *Code* and make such changes as are necessary to comply with Section 3 of the *Declaration Act*.

RECOMMENDATION 2: The province engage in a process consistent with Section 3 of the Declaration Act to make the B.C. Labour Relations Code compliant with the province's commitments to the U.N. Declaration on the Rights of Indigenous Peoples.

WORKER ACCESS TO UNIONIZATION

EQUAL ACCESS TO EMPLOYEE LIST

The nature of work and workplaces in British Columbia is changing rapidly and many workplaces have undergone transformational change since the last *Code* review in 2018. Now, more than ever, workers are employed remotely some or all the time, a trend that was accelerated by the COVID 19 pandemic. The prevalence of app-based work has also grown at an astounding rate. The new ways in which people are employed are now permanent features of our economy and the *Code* must adapt accordingly to provide workers with meaningful access to union certification and collective bargaining.

In 2016 the province of Ontario's *"Changing Workplaces Review"* recognized the trend toward more fractured workplaces and the implications that has for workers' ability to communicate with each other about their conditions of employment. That review recommended that employers be required to provide a list of employees where a union made application and had obtained the support of 20% of the workers in a proposed bargaining unit.

Employers have complete control of information regarding who employees are, where and when they work, and how to communicate with them. Even in more traditional workplaces, technological change has made it more difficult for workers to identify and communicate with their colleagues. Workers must be provided with access to their colleagues if they are going to have any meaningful ability to freely associate and have a union in their workplace should they choose to do so.

Some have raised employee privacy concerns, however union organizing does not entail a group of third-party union representatives coming in and taking over a workplace. Instead, union organizing entails employees in the workplace banding together and either forming or joining an existing trade union so they can access the rights and responsibilities that flow from union certification under the *Labour Relations Code*. This is not an external process imposed on the workplace. This is an internal process involving workers acting together to achieve their right to associate.

Therefore, we recommend provision of employee lists containing work location, job title, and personal contact information, once the union has 20% threshold as this strikes an appropriate balance of facilitating union organizing in the modern workplace while avoiding unwarranted dissemination of personal information.

RECOMMENDATION 3: Require employers provide an employee list, including contact information, when a union makes an application and meets a threshold of 20% support among members in a proposed bargaining unit.

MEMBERSHIP EVIDENCE VALIDITY EXTENSION

Membership cards are valid for six months under Regulation 3 of the *Code*. The validity of membership evidence should be extended to twelve (12) months to reflect the organizing challenges that persist for many difficult to organize sectors and workplaces in the province. The 2018 Code Review Panel reflected that features of the modern economy included "smaller workplaces, variety of shifts, working from home and remote worksites, and turnover". These features of the modern economy and modern workplaces persist today.

Membership evidence is valid in Ontario for 12 months as a matter of practice upheld by the Ontario Labour Relations Board for almost two decades. This suggests 12 months is a reasonable time frame for a union to obtain signed membership cards before filing a certification application.

RECOMMENDATION 4: Amend Regulation 3 to provide that membership evidence be valid for a period of 12 months.

MULTI-EMPLOYER, SECTORAL CERTIFICATIONS

The limitations of the existing Wagner Act model to facilitate collective bargaining across our diverse economy are well known and the subject of discussion for a considerable time. A majority of the 1992 Code Review Panel made a recommendation to address the need for sectoral bargaining that was not adopted by the government of the day. Since that time a new approach to union certification in certain economic sectors and modernization of the *Code* has only become more urgent.

Workers in highly fractured or remote work environments such as domestic and app-based workers, and employees of franchises and other small operations face systemic barriers to accessing union certification and collective bargaining. And, where unions are able to secure certifications in these sectors, union density is insufficient for workers to bargain effectively. Given that these workforces are comprised disproportionately of people from equity denied groups it is imperative that structural barriers to accessing their charter rights to organize a union and collectively bargain are removed.

The 2018 Code Review Panel recognized the limitations of the existing model of obtaining collective bargaining rights and the need for the *Code* to be amended. However, they were not prepared to make a specific recommendation for a new model. That panel saw the need for more in-depth analysis of the issue by a single-issue commission. We strongly urge the Panel to make the appointment of a single-issue commission a key feature in your recommendations to the Minister. Further, we strongly believe that such a consultation should not be open-ended; a single-issue commission reviewing broader based bargaining should consult on a specific sectoral bargaining model, or models, to provide focus and narrow the scope of the feedback it receives.

RECOMMENDATION 5: The province appoint a single-issue commission to investigate and make recommendations that provide for multi-employer, sectoral certifications (Broader Based Bargaining) for traditionally difficult to organize sectors.

EXTENDING THE POST-CERTIFICTION STATUTORY "FREEZE"

A statutory freeze on terms and conditions of employment after union certification is a standard principle in Canadian labour relations. As the 1998 Section 3 Committee observed in their Report, "The statutory freeze… is designed to level the playing field during first contract negotiations." It prevents employers from engaging in reprisals against employees who choose to unionize and fosters conditions for a smooth collective bargaining process. There is no guarantee that any particular condition will remain in place; but there is a guarantee that during the freeze period there will not be ongoing disruptions to collective bargaining due to unilateral changes to working conditions. In fact, one goal of unionization is to prevent the unilateral imposition of employment terms by employers.

The 1998 Section 3 Committee noted that, at that time, it took an average of six to nine months to conclude a first agreement and recommended extending the "freeze" period to eight months to better align with that timeframe. In 2019, in keeping with the recommendation of the 2018 Labour Relations Code Review Panel, the *Code* was amended to extend the freeze period to 12 months.

However, there is no rational basis for time-limiting the freeze period at all and some jurisdictions in Canada have eliminated this time limit. Employers can readily delay bargaining by engaging in tactics that extend negotiations beyond whatever time period is established. There is an incentive to do so, as employers then have free rein to change terms and conditions of employment with little consequence or remedy for the affected workers, who are particularly vulnerable. Given this power imbalance, it makes abundant sense to remove the reference to a time-duration for a statutory freeze post-certification. This would simply require deleting s.45(1)(b)(i) and adding language similar to that in s.45(2)(a).

RECOMMENDATION 6: Extend the statutory "freeze" post-certification until the parties reach a first collective agreement.

RECOMMENDED STATUTORY "FREEZE" LANGUAGE

It is recommended that s.45(1)(b) be amended to read:

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,

(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) a strike or lockout has commenced, or

(ii) a collective agreement is executed.

The recommended language found on the preceeding page would not prevent an employer from making bona fide changes to working conditions or wages. It would require application to the Board under s.45(3). This would balance an employer's legitimate business needs with protection for workers when they are most vulnerable, restoring balance in labour relations in a manner that is consistent with the purposes of the *Code*.

As noted by the 2018 Code Review Panel, changes to the freeze period require change to other relevant sections of the *Code*. It follows that revocation under Section 33 should not be permitted during the freeze period to permit sufficient time to conclude a first collective agreement.

If an application has been made under Section 55, the freeze should continue until that process has been completed.

STRIKES AND PICKETING

DEFINITION OF "STRIKE"

The current definition of "strike" in section 1 of the *Code* no longer contains a subjective intention, and reads as follows:

> "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 designed to or does restrict or limit production or services, but does not include
>
> (a) a cessation of work permitted by 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;

On the other hand, the current definition of "lockout" under section 1 of the *Code* includes an intention to compel:

> "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;

The definitions of "strike" and "lockout" are not balanced in the *Code*. Employers can engage in conduct that would meet the objective element of a "lockout" (i.e., significant changes to terms and conditions of employment). But the Union has the additional burden of proving the subjective element in order to have the conduct declared a lockout. On the other hand, employees are prohibited from stopping or slowing down work, or limiting production, in combination or concert regardless of whether or not they intend to compel their employer to agree to terms or conditions of employment.

This results in a significant imbalance: the Union must rely on the slower grievance process to deal with unlawful changes to working conditions rather than file an application alleging an unlawful lockout. Yet the Employer can bring the Union before the Board and ultimately seek significant damages even where workers did not intend their conduct to amount to a "strike".

This lack of a subjective element can also result in workers being found to have engaged in an illegal strike when they respect the picket line of federally certified workers who are engaging in a legal strike and legal picketing under federal labour legislation.

Thus, the definition of "strike" should include the subjective element, i.e. to compel their employer to agree to terms and conditions of employment.

RECOMMENDATION 7: Restore the definition of "strike" to include the intention to compel the employer to agree to terms of employment.

SECONDARY PICKETING

Restrictions on secondary picketing should be removed so that the *Code* complies with Supreme Court of Canada decisions recognizing that secondary picketing is a constitutional right guaranteed by the Charter rights to both freedom of expression and freedom of association.

Unlike other Canadian jurisdictions, secondary site picketing is still unlawful in most circumstances under the *Code*. The justification that corresponding restrictions on both secondary picketing and the use of replacement workers during a labour dispute maintains "an appropriate balance" is no longer reasonable. Secondary picketing restrictions have not been maintained in other jurisdictions and notably the recent introduction of Bill C-58 - An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012 did not include a "corresponding restriction" on secondary picketing to "balance" the introduction of robust measures to prevent the use of replacement workers in by federally regulated employers.

RECOMMENDATION 8: Repeal restrictions on secondary picketing.

COMMON SITE PICKETING

The Board's approach to applications for common site picketing relief by a "neutral third party" involves the neutral third party proposing picketing restrictions that would relieve them from being impacted by the effects of picketing altogether. Under s.65(7), the Board "must" adopt the common site picketing relief proposals of a neutral third party unless the proposals result in a complete prohibition on picketing, in which case the Board will restrict picketing geographically or temporally to limit the impact on the neutral third party.

Section 65(7) in its plain wording and the Board's approach to implementing the provision are inconsistent with workers' constitutionally protected rights to strike and picket under ss.2(b) and 2(d) of the *Charter*. Section 65(7) should be amended to recognize these constitutionally protected rights and require the Board to only grant common site picketing restrictions in a manner that is minimally impairing on a union's right to strike and picket.

RECOMMENDATION 9: Amend provisions related to common site picketing relief to comply with the right to strike under s.2(d) of the *Charter*.

PICKET LINES OF OTHER JURISDICTIONS

We understand that this matter is currently before the Legislature, but as the Bill to amend the Code's definition of strike has yet to pass third reading, we provide the following recommendation.

The definition of strike should be changed so that workers who honour a picket line at a federally regulated workplace will not be penalized as engaging in an illegal strike. To be consistent with the Charter-protected values of free expression and association, the *Code* must protect the right to respect picket lines, regardless of the jurisdictional origin of those picket lines. This change can be made to Section 1 of the *Code* by simply changing the current phrase "picketing that is permitted under this Code", to "picketing that is not prohibited under this Code".

RECOMMENDATION 10: Recognition of legal picket lines from another jurisdiction.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: Amend successorship provisions so that the certification follows a transfer of workers and work to reflect the modern realities of contract tendering, retendering and cancelling, and modern forms of corporate transfer. Place the primary evidentiary burden on the employer when a successorship or common employer application is filed.

RECOMMENDATION 2: The province engage in a process consistent with Section 3 of the *Declaration Act* to make the B.C. Labour Relations Code compliant with the province's commitments to the U.N. Declaration on the Rights of Indigenous Peoples.

RECOMMENDATION 3: Require employers provide an employee list, including contact information, when a union makes an application and meets a threshold of 20% support among members in a proposed bargaining unit.

RECOMMENDATION 4: Amend Regulation 3 to provide that membership evidence be valid for a period of 12 months.

RECOMMENDATION 5: The province appoint a single-issue commission to investigate and make recommendations that provide for multi-employer, sectoral certifications (Broader Based Bargaining) for traditionally difficult to organize sectors.

RECOMMENDATION 6: Extend the statutory "freeze" post-certification until the parties reach a first collective agreement.

RECOMMENDATION 7: Restore the definition of "strike" to include the intention to compel the employer to agree to terms of employment.

RECOMMENDATION 8: Repeal restrictions on secondary picketing.

RECOMMENDATION 9: Amend provisions related to common site picketing relief to comply with the right to strike under s.2(d) of the *Charter*.

RECOMMENDATION 10: Recognition of legal picket lines from another jurisdiction.

CONCLUDING REMARKS

In addition to the recommendations above, CUPE BC supports the BC Federation of Labour's submission to this panel.

The Panel instructed stakeholders to identify their desire to participate in a public hearing as part of their submission and identified two possible dates in Vancouver. CUPE BC requests to attend a public hearing in Vancouver on either of April 5th or May 7th 2024, our preference is for May 7th if that date is available.

The BC *Labour Relations Code* requires ongoing review; revisions should continue to restore balance and fairness in labour relations in our province to provide workers with meaningful access to their *Charter* protected rights to freely associate and bargain collectively. Furthermore, changes in the labour market, and the structure of employment relations exacerbate the limitations of the *Code*. A broad array of reforms, set out in this submission, is therefore necessary to redress the inadequacies of the *Code* and bring it in line with the realities of modern employment relations.

CUPE BC

CANADIAN UNION OF PUBLIC EMPLOYEES **BRITISH COLUMBIA**

LABOUR CODE SUBMISSIONS
March 22, 2024

VIA EMAIL: lrcreview@gov.bc.ca

Members of the Labour Relations Code Review Panel:
Sandra Banister, K.C.,
Michael Fleming
Lindsie Thomson

Re: Submission To Amend Section 62 of the *Labour Relations Code* [RSBC 1996] Chapter 244

To the Learned Members of the Labour Relations Code Review Panel:

It is our respectful request and submission to the Review Panel that Section 62(1) of the *Labour Relations Code* [RSBC 1996] Chapter 244 (the "*Code*") must be amended. This section has not, to date, been interpreted by the Board in any reported decision. However, on a plain reading, the current language risks being interpreted in a manner that is unjust to Union members engaged in strike activities without ceasing the performance of work. We respectfully submit that such an interpretation is contrary to the intention of the Legislature, the purposes of the *Code*, and existing jurisprudence, such that it must be avoided by an amendment to the *Code*.

In this regard, we request that this Review Panel consider the following submissions.

Overview

1. Section 62 of the *Code* provides:

> (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.

2. The *Code* defines a strike as follows:

> "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 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

3. A plain reading of Section 62(1) of the *Code* can be argued to mean that *any* lawful strike activity by employees will trigger a transfer of the employer's ordinary obligation to pay employees' health and welfare contributions to the trade unions and their members in order for the benefits to continue. Upon that interpretation, employers would no longer be obligated to pay their employees' contributions for employees' health and welfare benefits if employees engaged in *any* form of a lawful strike, which may include forms of strike in which the employees continue to perform their full scope of work.

4. We do not dispute application of the above-noted interpretation of Section 62 to employees engaged lawfully in a strike or who are lawfully locked out where the employees cease performing their regular services and duties; Such an application is clearly aligned with the jurisprudence which holds that remuneration and benefits flow from the performance of employment duties. Rather, we express serious concern that the language of section 62(1) may be interpreted to apply to Unions and Employers whose employees are engaged in lawful strike activities that are less than a complete cessation of work, or that are "a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services" while still performing their work.

5. We dispute that the Legislature intended that the language of Section 62 was intended to allow an employer to cease paying its benefit contributions as soon as members engage in *any* type of strike activity. This would include strike activities such as refusing to perform overtime, engaging in "work to rule", or refusing to wear their uniforms while performing the full duties of their employment.

6. For the reasons that follow, we respectfully request and recommend that Section 62 be amended to articulate clearly that an employer must pay benefits contributions for members who are engaged in strike activity through which they continue to perform the regular duties of their position. Only where trade union members engage in strike activity that results in the

complete cessation can the Employer transfer the entire obligation of benefit payments to the Union.

Unjust Enrichment as an Unintended Consequence of Section 62

7. Where strike activity entails the continued performance of required duties of members' employment under a Collective Agreement, we submit that the application of Section 62 must be drafted to result in an interpretation that aligns with the purposes of the *Code* and the substantial arbitral jurisprudence which concludes that extended health and welfare benefits must flow from the performance of ongoing employment duties. The current language that leaves room for the above-described interpretation may allow employers to benefit from the ongoing employment of bargaining unit members but pay only partial compensation under a Collective Agreement, by paying wages but refusing to pay benefit contributions. This would plainly result in the unjust enrichment of employers.

8. The test for unjust enrichment was summarized in *Moore v. Sweet,* 2018 SCC 52 ("Moore") at para. 37**:**

> [37] In the latter half of the 20th century, courts began to recognize the common principles underlying these discrete categories and, on this basis, developed "a framework that can explain all obligations arising from unjust enrichment" (L. Smith, "Demystifying Juristic Reasons" (2007), 45 Can. Bus. L.J. 281, at p. 281; see also Rathwell v. Rathwell, [1978] 2 S.C.R. 436(S.C.C.), and Murdoch v. Murdoch (1973), [1975] 1 S.C.R. 423(S.C.C.), per Laskin J., dissenting). Under this principled framework, a plaintiff will succeed on the cause of action in unjust enrichment if he or she can show: (a) that the defendant was enriched; (b) that the plaintiff suffered a corresponding deprivation; and (c) that the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason (Becker v. Pettkus, [1980] 2 S.C.R. 834 (S.C.C.), at p. 848; Garland, at para. 30; Kerr, at paras. 30-45). While the principled unjust enrichment framework and the categories coexist (Kerr, at paras. 31-32), the parties in this case made submissions only under the principled unjust enrichment framework. These reasons proceed on this basis.

9. We submit that the current language of Section 62 may be interpreted to allow for employers to be unjustly enriched based on all three elements of the test. For example, in the circumstances in which any bargaining unit member(s) continue to work as a full-time employee while also engaging in strike activity:

    a. the Employer would continue to benefit from the full performance of the employees' strict job duties while only being required to partially compensate those employees with wages but not health and welfare benefits;

b. Union members would be required to pay additional contributions to cover what is ordinarily the Employer's contribution for Employer Benefits Coverage premiums; and

c. There is no reason in law or equity for an Employer to retain both the benefit of full performance of employees' duties in their regular positions and its Employer Benefits Coverage contribution amount.

10. It is our submission that Section 62, as it was drafted and remains in the *Code*, was intended to provide union members with *access* to benefits during a strike. It was not intended to permit struck employers to be unjustly enriched at the expense of employees and the union where the strike entailed the continued performance of employment obligations.

The Legislature's Intent Was to Support Union Members' Engaging in Lawful Strike Activity

11. The origins of Section 62 show that the legislature's intent was to offer unions the ability to continue their membership's benefits during a withdrawal of services in a lawful strike. It was meant to be supportive and helpful to union members.

12. As will be demonstrated below, the Legislature expressed the above intention without any suggestion that this requirement would be imposed on unions where their members continued to serve the employer with their full performance of required duties. There is simply no evidence that the Legislature contemplated this provision being applied to employees who were engaging in strike activity but still earning wages.

The 1992 Subcommittee Report

13. The concept and benefit of affording members access to benefits while they withdraw from working for their employer during a strike is seen in the September 1992 Subcommittee Report of Special Advisors by Tom Roper, John Baigent, and Vince Ready (collectively, the "Subcommittee Report"). This report recommended inclusion of a provision in the *Code* allowing for continuation of health and welfare benefits for the duration of a strike. This recommendation flowed from the learned authors' conclusion that the discontinuation of benefit coverage was a significant <u>obstacle to resolving impasses</u> in collectively bargaining in instances where the parties could not reach voluntary agreement to do so (page 49).

14. In particular, the Subcommittee expressed concern over the difficult, if not impossible task for employees to find temporary replacement benefits when engaged in a lawful strike (or when locked out).

The Hansard

15. At the committee stage of the passage of the *Code*, or Bill 84 as it was, there was the following limited debate leading to the inclusion of Section 62:

L. Hanson: Mr. Chairman, 62 deals with a new clause, which will give employees during a strike or a lockout the right to benefits they had enjoyed. The question I have for the minister is: does this apply also if the employees have gone on to other jobs or other occupations? Would they still be able to take advantage of that? And also, is there any method under those circumstances...? There could be a test, the same as there is with an employee at work, of the need for that protection if it were claimed. A concern that was raised with me, for the minister's benefit, is two things. If the individual finds another occupation or another job, are they still entitled to it? Secondly, if there is less than a responsible use of those benefits, is there some protection for the plan? Because the results of that would live with the employer on his record. Most of these plans are based on experience if the minister can appreciate that.

Hon. M. Sihota: First of all, I guess it would depend on the wording of the insurance coverage or the benefit coverage. There are situations where you're covered even though you're not employed. Sometimes people do acquire insurance that goes way beyond.... I'm trying to think of a good example; I just can't. Let me give you an example. When I was maintaining a law practice -- this is in opposition -- although my primary source of income was from here, I had a source of income from my law practice. And if I were injured, let's say here in the Legislature, I still had disability coverage that would allow me to continue a stream of income from my law practice. I guess people can buy that kind of coverage. So that's why I won't categorically give you an answer. Let's take the example of someone leaving a pulp mill during a strike and driving a cab and getting involved in a motor vehicle accident while they're driving a cab. My reading of the section is that the cab company would have to bear the responsibility of that experience, not the pulp company. The person was not in the employ of the pulp company, but of the cab company. So it would not reflect back in the clean sense that I referred to, assuming that there isn't a policy to cover that eventuality.

L. Hanson: I think I understand that. I have some difficulty in relating the circumstances of the minister's law practice and his tenure as an MLA to the same circumstances. I think what the minister said is that if the policy, whatever the wording is, precludes that coverage.... Most policies that I'm aware of -- maybe the minister can enlighten me -- have disability insurance, regardless of the cause of the disability. When someone in the circumstances that we're talking about seeks other employment to supplement their income -- and reasonably so; I have no difficulty in understanding that -- usually it's on a very temporary basis, and coverage under a policy from that employer is very unlikely.
It seems to me that this would say that the employer must extend that benefit, regardless of the circumstances. I can understand why the clause is put in and the thinking behind it in the first place. Those

> people who are walking the picket line want to enjoy the benefits of the protection they had while they were employed by that employer, and there is a provision where it must be paid for. I understand all of that, but it does seem that there's an unfairness under the circumstance that I suggested.
>
> Section 62 approved. (Underline added.)
>
> Hansard, December 9, 1992[1]

16. It is clear from the above transcript that the purpose of the newly introduced Section 62 was to preserve benefits for those employees who had withdrawn their labour, while they no longer had access to their wages. As explained by the Subcommittee Report, in the absence of preserving those benefits, the parties' ability to overcome impasse in bargaining is compromised.

17. Additionally, the above reflects that Section 62 was intended to support, and not detract from, the duties under Section 2 the *Code*:

> 2(c) encourage the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees.
>
> 2(e) promote conditions favourable to the orderly, constructive and expeditious settlement of dispute; and

18. We submit that an interpretation of Section 62 which causes unions to be responsible for the payment of benefits no matter how limited the strike activity is inconsistent with what Legislature sought to achieve by this provision. Rather, it compromises conditions favourable to the expeditious settlement of the collective bargaining process and discourages engaging in the practice and procedures of bargaining. The Legislature's intention in creating Section 62 of the *Code* was to foster and not detract from these principles of the *Code*.

19. From reviewing the Subcommittee Report and legislative debates about Section 62, there is no evidence that Legislature contemplated the possibility of employers ceasing payment of employee benefits, and Unions incurring the cost of benefits where the employees engaged in strike activity that entailed the continuation of service to the employer, and the continued earning of wages from the employer.

Purpose and Undermined Intended Benefits of Section 62

Constructive, Expeditious Bargaining

20. By relieving members of the desperate circumstances of choosing between

[1] 1 https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/1st-session/19921209pm-Hansard-v7n11

engaging in a strike and losing the benefits upon which their health depends, access to the practice and procedures of collective bargaining, including the right to strike, becomes a reality. By enabling employees access to the right to strike without fearing for their health (or that of their families), parties will remain driven towards a constructive and expeditious settlement of a new collective agreement in order to avoid the occurrence (or long duration) of a strike. This is because the consequence of unions having to pay for benefits (or deprive members of benefits) under the existing Section 62 while members continue to perform their employment duties, is the financial exhaustion of unions sooner than the strike activity would be likely to have an impact on the employer's position in bargaining. Where unions whose members opt to initiate **any** form of strike will face considerable expenses each month to provide benefits to their entire membership, many unions will simply be prevented from engaging in a volume or duration of strike activity that will bring the parties into more productive bargaining discussions.

21. Importantly, therefore, if partial strike activity that maintains employees performing their employment duties triggers the application of Section 62, the same problem that Section 62 was implemented to resolve is and will continue to be re-created: **members will be unable to engage in the right to strike in an adequate and meaningful way that will bring about an efficient resolution of the bargaining dispute**. This is because after a very limited period of strike activity, members will be deprived of resources (whether benefits or wage replacement/strike pay) upon which to survive during a strike. The access to striking that Section 62 was intended to foster by ensuring employee access to benefits will again disappear when too quickly a union cannot afford to pay for them.

22. Additionally, if the consequence of any job action is that the Union must pay significant (and potentially cost-prohibitive) amounts towards its members' benefits, that tips the balance of power in favour of the Employer without a juristic reason. This would be ironic and wrong, given that the provision was created to protect unionized workers and their bargaining power by giving them greater access, not barriers, to benefits supportive of their health and wellbeing during a strike.

23. Furthermore, partial strikes of a bargaining unit generally allow the parties the flexibility to tailor their approaches to have the most impact on the bargaining process, as determined by the parties, with the least impact to their respective bottom lines, while both the Union and Employer are aimed at getting a full resolution to the bargaining dispute. The right to strike becomes a far lesser tool for the Union to press for better terms and conditions of employment when it cannot rely on, as part of its strategy, initiating forms of strike activity that require a lesser quantum of Union funds. In other words, the variety of strike activity protected by the *Code*, ranging from a full withdrawal of services to refusing to wear uniforms or perform overtime, exist because they enable unions to engage in longer periods of strike activity without exhausting their resources to support their members, or imposing the most serious disruption on non-parties' lives and the public interest. The significant variety in strike action that is seen over the course of a strike evidences the creative approach by which unions must influence employers on a limited strike budget, while upholding *Code* principles that discourage greater impact on people and entities other than the struck parties.

24. Conversely, and an unintended consequence of applying Section 62 as it currently exists, is that Unions are disincentivized from initiating less disruptive forms of striking, such as a refusal to wear a uniform or work overtime hours, since the less disruptive strike activities have the same consequences as a full strike. The unintended, unjust result is that employees have both less access to their rights to strike, and greater motivation to go 'all-in' for greater impact where the deprivation they stand to suffer as a result of striking will be felt similarly.

25. Thus, we respectfully submit that in order to uphold the principles of the *Code* in section 2, Section 62 must be amended to allow for a reasonable interpretation which properly protects and maintains a balance of bargaining power between Unions and Employers during a strike.

26. Further, whereas further Duties under Section 2 the *Code* include the duty to:

> 2(f) minimize the effects of labour disputes on persons who are not involved in those disputes, and
>
> 2(g) <u>ensure that the public interest is protected</u> during labour disputes.

27. If Unions must incur the added expenses of their members' benefits in the event of any kind of strike activity, they would have less reason to forego a strike in full, whereas full withdrawal of services will have a greater *impact on the public* as opposed to a more targeted approach. Creating such a situation therefore results in an interpretation of Section 62 that is inconsistent with section 2(e),(f) and (g) of the *Code* by motivating greater disruptions to the Employer's operations, increased disruption to entities which are not party to the dispute, (including family members or dependents of employees who may be deprived of benefits) and risk of harm to the public interest.

Illogical Interpretation in Context of Essential Services Orders

28. Finally, in circumstances where Essential Service Orders are applied, it defies logic and juristic reason that a struck employee who is performing the duties of their position pursuant to an essential services order is entitled to the payment of full compensation including benefit contributions on the language of Section 62, but a struck employee who performs the duties of their position where strike activity allows is deprived of that same compensation entitlement under the collective agreement pursuant to the current Section 62.

29. Put otherwise, as Section 62 is currently interpretable as allowing employees to be compensated with benefits during a strike when they work pursuant to an Essential Services Order, Section 62 must also be interpreted as allowing employees to be fully compensated for work they perform while engaging in a strike that continues performance of their employment duties.

30. Just as Section 62 has no impact on an Employer's obligation to pay for benefits of otherwise struck employees who are performing the duties of their employment pursuant to an Essential Services Order, Section 62 must be interpreted as affording struck employees their benefits where their strike activities result in their performing the work under the collective agreement.

CONCLUSION

31. Based on all of the foregoing, we respectfully submit and request that the *Code* be revised so that when members of a struck union are engaged in strike activity that entails the continued performance of work, the Employer continues to compensate them with their benefits.

Sincerely,

GOODWIN LAW
per:

Carolyn Janusz,
Carolyn Janusz Law Corporation

Leigh Lester
Leigh Lester, Articled Student
GoodWin Law

GREATER LANGLEY
CHAMBER OF COMMERCE

March 21, 2024

Labour Relations Code Review Panel
Sandra Banister, K.C.
Michael Fleming
Lindsie Thomson

Subject: Submission from the Greater Langley Chamber of Commerce regarding the Labour Relations Code Review

Dear Panelists,

The Greater Langley Chamber of Commerce, representing over 1,000 distinct businesses from across Langley and the surrounding areas, appreciates this opportunity to contribute to the ongoing review of the Labour Relations Code. While we represent employers, our organization works at the intersection of business and the community, and seeks to contribute positively to the improvement and success of both.

We believe that any changes to the Code should be both measured and sustainable, reflecting the need for stability in the employer-employee relationship and the broader economic environment. It is our position that the current labour market dynamics, characterized by a persistent shortage of workers across various sectors, naturally tilts the balance in favour of employees already. This market reality underscores the importance of ensuring that any amendments to the Code do not unduly tip this balance further but rather aim to foster a fair and equitable environment for both employers and employees.

Further, we respectfully submit that the focus of this review should remain on appropriately governing the collective bargaining process and ensuring interactions between employers and employees are fair for all. The growth or decline of union density in British Columbia should not be a determinant in considering reforms to the Code, and the resulting rise or fall of unionization should be seen as either justification for further action or proof that prior actions taken were appropriate. Efforts to promote or stabilize unionization rates should not overshadow the Code's core purpose of facilitating a fair and effective collective bargaining framework.

One-Step Certification Process and Bill 10

We advise caution against further easing the union certification process through additional Code reforms. While we recognize the importance of workers' rights to organize, it is crucial that the certification process remains balanced. An overly expedited or simplified certification process risks undermining the consideration and consent that should underpin any decision to unionize.

Regarding Bill 10 which was passed in 2022, we did not support this move to eliminate the secret ballot and remove this simple, clear and demonstrably democratic step in the union certification process. We would therefore oppose any

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further loosening of the single-step certification process and its current thresholds for certification, and would urge you to reiterate in your report to the Minister your Panel's belief from 2018 that "the secret ballot be retained".

Employer Communication During Union Organizing Campaigns

Specifically related to previous changes to Section 8 of the Code, we are concerned with the restrictions limiting employers' ability to communicate with their employees during union organizing campaigns and prior to certification votes. Employers should retain the right to present factual information and articulate legitimately-held beliefs in a respectful manner. This ensures employees can make informed decisions based on a full understanding of the implications of unionization.

The specific removal of language around the freedom to communicate regarding unions and union activity is a significant encroachment upon the speech of employers, and unduly curtails employers' opportunities and rights to engage in the process. We would support returning this broader language on speech to Section 8.

5 Business Days Timeline

As part of the original retention of the secret ballot, the timeline for holding a certification vote was shortened from 10 days to 5 days – a tighter timeline largely seen as beneficial to unionization methods. In light of the subsequent removal of the secret ballot in 2022, this expedited timeline should be re-examined.

The 5 day timeline hampers the ability of employers to participate, communicate or comply with Board rules or orders. For example, employers seeking legal counsel to ensure they communicate with employees in a manner consistent with the Code have very limited time to seek out that advice and may make inadvertent contraventions as a result. In addition, while the Board can compel employers to produce lists of all employees in a proposed bargaining unit, this order may be unrealistic to complete on such a truncated timeline. Again, this expedited timeframe should be reviewed.

Section 14 and Automatic Certification

The broad powers granted to the Board under Section 14, particularly when combined with the aforementioned restrictions on employer speech and the 5-day timeline for certification votes, create an imbalance that disadvantages employers.

This ability of the Board to impose certification without a vote, in certain contexts, requires careful reconsideration to ensure it does not unduly bias the process in favor of unionization, or unduly exclude or discourage employers from fair participation in the process. We support careful examination of the appropriateness and applicability of this power.

Conclusion

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CHAMBER OF COMMERCE

The Labour Relations Code is important to ensure a framework that supports the success and sustainability of businesses and workers alike. However, in a market already tipped in favour of workers and an economy already putting strain on employers, further changes to the Code to enhance unionization seem unwarranted. Instead, we encourage the Panel to consider our above points carefully, and look to make modest, sustainable improvements to the Code that support our employer community and the long-term success of our broader economy.

Thank you for your consideration of our submission and we welcome any further opportunity to consult and contribute to this process.

Sincerely,

Cory Redekop
CEO
Greater Langley Chamber of Commerce

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20 March 2023

RE: GVBOT Submission on 2024 Labour Relations Code Review

Dear Labour Relations Code Review Panelists,

We are respectfully providing this submission to the Labour Relations Code Review Panel (the "Panel") which reflects the interests and priorities of the Greater Vancouver Board of Trade (GVBOT) and its 5,000+ members. You will find that there are many synergies between this submission and others by other business associations.

Before speaking about issues specific to the Code, we wanted to ensure the Panel understood our Members' view of the economic situation at present. Overall, the economic context in the province is quite sobering. British Columbia's 2023 real GDP growth was a meager 0.9%. This means the province undershot the national average for the first time in 10 years. It is even more worrying that many forecasts including those of TD and RBC show our province fighting Ontario for last place in Canada in 2024, with virtually no growth in our economy after accounting for inflation. RBC noted in their March 12, 2024 provincial economic forecast that "overall, we see economic growth in B.C. trailing all other provinces this year with a y/y real GDP growth rate of 0.3%."

Moreover, B.C. is experiencing record breaking population growth while our economy is stagnating, four major projects are nearing completion, and business investment and productivity gains are becoming more elusive. At the same time, annual inflation rates are slowing but cost of living pressures following several years of decades-high inflation are causing concern for workers and businesses alike. We recommend that the Panel consider the economic backdrop when considering changes to the Code.

Noting this, we also recommend the Panel consider the significant changes to the Labour Relations Code made over the past seven years. These changes have significantly altered the balance of labour relations in the province. This review must consider the cumulative impact of the shifting regulatory landscape and the impacts that government requirements have on the business community and the economy at large.

In addition to the economic and labour landscape changes in recent years, we want to highlight an additional, specific concern regarding the process of consultation. We have significant concerns about the government's understanding and view of the mandate of the Section 3 review process. These concerns primarily stem from the government's decision to table a significant amendment to the Labour Relations Code, Bill 9, *Miscellaneous Statutes Amendment Act, 2024*, tabled on March 11, 2024, that could significantly affect critical sectors and large operations. This amendment has been proposed while the consultation by the Panel was ongoing. While we have no doubts or questions about the integrity of the members of the Panel and their sincerity to work diligently to review the Code, this has shaken our belief in the government's intent to actually receive and make decisions based on a desire to balance interests and seek the best outcomes for workers and businesses in the province.

An even more significant amendment was made between the now legislated five-year Code reviews when the government eliminated the secret ballot as part of the certification process. We respectfully submit that the Panel should include in its review a commentary regarding what the Panel believes to be an ideal form of consultation for this and future reviews.

With this context in mind, our feedback for the Panel includes:

1. **Definition of Strike**

The government has introduced Bill 9 - *Miscellaneous Statutes Amendment Act, 2024* which proposes to change the definition of "strike" in the Labour Relations Code of British Columbia (the "Code").

On March 13, the GVBOT and other business associations wrote to the Minister to express serious concern around this substantial legislative change made with no engagement or consultation, fully outside of this Labour Code Review.

As the letter notes, it is unclear what the urgency or public policy purpose is for the proposed legislative change in Bill 9. To our knowledge, the change proposed to the definition of "strike" has no equivalent in legislation governing labour relations in any other province. While proposed and packaged as a minor change, it is not. The change is far-reaching, and we are concerned that it could have significant economic and financial implications.

The change to the definition of "strike" would increase the collateral impacts and instability of strike action to other operations as it reduces the potential relief from picketing available to employers not directly party to a labour dispute. Provincially regulated employers dealing with common site or secondary picketing may now be left with no recourse when federally regulated employees picket a common site.

Given the extent of federally regulated industries operating in B.C., the effect of this definition change would be substantial. The measure could, for example, make it possible for a single federally regulated postal worker to set up a picket line and shut down a large employer's site, such as a pulp mill or refinery. Major sites where there are both provincially and federally regulated employees could be impacted. Another example is found with CN and CPKC which have rail operations throughout B.C. with multiple points of intersection and interaction with provincially regulated employers, including major industrial operations.

In 2022, a labour dispute between Seaspan ULC and the Canadian Merchant Service Guild resulted in the Board finding a limited exception to the definition of "strike" is contained in the Code where a refusal to work is due to picketing and is expressly

permitted by the BC Code. In this case, significant economic ramifications were at stake, affecting multi-billion-dollar contracts.

Meaningful change in the labour relations landscape in B.C. must be grounded in transparency, inclusivity, and respect for procedural fairness. We respectfully call on the Panel to consider the impacts of this change and note the challenges inherent with the change in definition.

2. **Certification Rules**

The government acted contrary to the recommendation of the 2018 panel when it removed the secret ballot in 2022. This followed a reduction in the timelines for a certification vote from 10 to 5 days. The shorter deadline for voting has caused the Labour Relations Board to also cut down the time employers have to provide employee information and take part in certification hearings. This means employers have very little time to react when certification applications are filed, usually right before the weekend, which greatly affects how fair the process is for them. The Panel should reaffirm it's prior decision to maintain the secret ballot and recommend a fair and equitable timeline for a certification vote, should the card-based certification be maintained. We recommend at least 20 days an increase from the 10 days, prior to 2019.
Further, we believe that the Panel should consider whether it makes sense to limit the impact of card-checks for small workplaces. It should consider whether there should be additional rules relating to circumstances where employees have moved on by the time certification happens. Consideration could also include whether there should be different percentage thresholds for card-checks for smaller workplaces.

3. **Sectoral Bargaining**

We do not support changes that would permit sectoral bargaining in certain sectors. Permitting sectoral bargaining would shift the balance in labour relations and could affect our already challenged position of attracting investment. We believe that it could prove especially challenging for small and medium sized enterprises. Introducing sectoral bargaining into the rules would dramatically change how the system currently works, so it's important to study it carefully before making any changes.

4. Considerations for the Gig Economy

When the Province last conducted a comprehensive review of the Labour Relations Code in 2018, the resulting report briefly touched on the "gig economy" and recognized that "the traditional concepts of employment may no longer be applicable in the gig economy." One well-known part of the "gig economy" is app-based ride-hail and food-delivery work. Starting in late 2022, the Ministry of Labour began a series of engagements to comprehensively review the app-based ride-hail and delivery-work sectors, identify priority concerns, and explore whether to propose new standards and protections for these sectors. Because those engagements are still ongoing, we recommend that the Panel not propose any changes that may be related to these sectors at this time. The business community needs to better understand the impacts from that consultation before making additional changes in the Labour Code are recommended.

We appreciate your careful consideration of our submission in the interest of maintaining a balanced regulatory framework that fosters a thriving business environment and provincial economy.

Sincerely,

Bridgitte Anderson
President and Chief Executive Officer
Greater Vancouver Board of Trade

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March 22, 2024

Labour Relations Code Review Panel 2024
By electronic mail: lrcreview@gov.bc.ca

Dear Panel Members,

This letter constitutes my submission to the panel regarding possible amendments (and in one instance, a submission to retain an existing provision) to the *Labour Relations Code*. At the outset, I wish to emphasize that this submission reflects only my personal views, and must not be read as reflecting the position of the Gustavson School of Business or the University of Victoria.

"Contracting out" of the Employment Standards Act

Section 3 of the *Employment Standards Act* permits a limited "contracting out" of certain provisions of the *ESA* in a unionized workplace. In the event of a dispute regarding the interpretation or application of an *ESA* minimum standard, section 3 mandates that the dispute is subject to the grievance arbitration provision contained in the collective agreement. However, the Director of Employment Standards may be requested to enforce the arbitrator's award if it is in relation to "wages".

There is no principled reason why the minimum *ESA* standards should not apply in a unionized workplace on the basis that, when several provisions are considered jointly, they "meet or exceed" the minimum standards. All minimum standards should apply to all workers in the province subject to the *ESA*, and, in a unionized workplace. can be interpreted and applied by grievance arbitrators under section 89(g) of the *Code*. As for enforcement, there is no need to involve the Director of Employment Standards when the *Code* already contains a robust enforcement mechanism for arbitral awards. However, in order to maintain consistency of application as between unionized and non-unionized workplaces, an appeal of a decision issued under section 3 of the *ESA* by a grievance arbitrator should be filed with the Employment Standards Tribunal, rather than the Labour Relations Board.

Reciprocity for automatic certifications and decertification

Section 23 permits so-called "card count" or automatic certifications. While these certifications are predicated on proof that the union has the support of 55% (not a simple majority) of the proposed bargaining unit employees, there is always the concern that some employees, when asked to sign a membership card, may feel obliged to so. The confidentiality of the ballot box is

thus lost. In addition, where there is an automatic certification (thus denying a vote to all bargaining unit members), industrial democracy, as well as the bargaining unit employees' and the general public's confidence in the certification process, is undermined.

Although a secret ballot election is the more legitimate and democratic option (especially when conducted within tight time frames), if automatic certifications are to continue, there should be reciprocity insofar as decertification applications are concerned. It is not clear why a vote is considered mandatory for decertification applications, but a vote is not necessarily mandatory for certification applications.

Religious Objectors

Section 17 of the *Code* allows the Board to issue an order authorizing a bargaining unit employee to refuse to join a union, or to pay union dues, on the basis of that employee's "religious conviction or belief". Although such an employee is relieved from joining the union or paying dues, that employee must still pay the equivalent of the union dues that would be otherwise payable, to a registered charity. Seven of the fourteen Canadian jurisdictions (BC, Alberta, Saskatchewan, Manitoba, Ontario, the Northwest Territories, and the federal jurisdiction) have a "religious objector" provision in their general collective bargaining law, each of which is broadly comparable to the BC provision. There is no "religious objector" provision in the labour legislation of the other seven jurisdictions.

The BC government should repeal section 17. First, the provision is anomalous, since other section 2 *Charter*-protected rights – such as freedom of thought, conscience, belief, opinion, and association – cannot lawfully ground a refusal to join a union or to pay dues.[1] Second, although the objector must still pay the equivalent of union dues, those monies are not channeled to the union, but rather to a third party. Because the union remains obliged to represent the objector, and the objector obtains the full benefit of the collective bargaining agreement, the objector essentially becomes a free-rider – securing all of the benefits of union representation and the collective agreement without contributing to the union's requisite operational costs. Third, opting out of a mandatory contribution scheme on the basis of a religious objection is not permitted in other economic contexts. A *bona fide* pacifist cannot opt out of paying that portion of their income taxes allocated to defence spending. A municipal taxpayer, perhaps an atheist (recognized by the Supreme Court of Canada as a form of religious belief[2]), may object to church land and improvements being exempted from property taxation (which effectively constitutes a subsidy by other taxpayers to the church organization), but that does not justify the atheist's refusal to pay their full share of taxes otherwise owed. Finally, there are few *bona fide* religious organizations that have an anti-union animus as part of their fundamental tenets – indeed, organized religions in Canada overwhelming view the labour

[1] See *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 and *R. v. Advance Cutting & Coring Ltd.*, 2001 SCC 70.

[2] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at para. 70.

movement as an ally, rather than an adversary. When one examines the Board's jurisprudence surrounding section 17, the dominant theme is that the applicant has a personal and ideological objection regarding unions, which has been transmuted into a generalized "religious" objection for purposes of the section 17 application.[3] Such an individualized belief system should not justify free-riding, especially when other honestly-held negative beliefs and opinions regarding unions, but not expressly asserted as a "religious objection", do not.

Sectoral bargaining for gig economy workers

Workers in the "gig economy" are frequently poorly paid (in many cases below minimum wage[4]), and misclassified as independent contractors. While many gig economy workers might meet the *Code*'s definition of a "dependent contractor", to date, gig workers are wholly outside BC's collective bargaining regime. Although there are pending changes to the *Employment Standards Act*, which should alleviate some of the vulnerabilities that gig workers face, sectoral bargaining for gig workers is something that should be explored (perhaps commencing with the "ride share" sector, as is now the case in the United Kingdom).

Replacement Workers

In most Canadian jurisdictions, employers may use "replacement workers" in the event of a strike. That being the case, the review panel may receive calls to remove section 68 from the *Code*. Those calls should be disregarded. First, replacement workers are rarely used on a wide scale (i.e., other than using existing managerial personnel on a stop-gap basis). Second, when used, strikes tend to be longer and more contentious. Third, using replacement workers tends to increase the incidence of picket line violence. Fourth, using replacement workers has an adverse effect on workplace climate.

Dispute Resolution in the Public Sector

The predominant 1935 Wagner model of labour relations, imported into Canada from the United States, was built to serve the needs of employers and unions in the *private sector*. Public sector bargaining simply did not exist in any consequential fashion in the US in the 1930s, and only largely took hold in both Canada and the United States in the 1960s. Although, for the most part, public sector bargaining in the US is conducted under a somewhat different regime from the Wagner model, especially with respect to dispute resolution (strikes are either unlawful or tightly constrained), public sector labour relations in Canada primarily are conducted within the confines of the Wagner model, and public sector unions generally have a right to strike.

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[3] See, for example, *Fraser v. Board of School Trustees School District No. 34*, 2021 BCLRB 19 and *Bogunovic v. British Columbia Teachers' Federation (Chilliwack District Teachers' Association)*, 2018 CanLII 79734.

[4] *Heller v. Uber Technologies Inc.*, 2021 ONSC 5518 at para. 70.

In the private sector, the parties' right to resort to "economic weapons" such as strikes and lockouts reflects the notion that either tool typically causes both parties to suffer some measure of economic harm. This harm, or potential for harm, is what motivates the parties to seek a negotiated resolution, either before or during a strike/lockout. Goods and services providers in the private sector are rarely monopoly providers and, as such, must be concerned about losing market share to competitors if a work stoppage drags on. During a work stoppage, the firm's customers can usually "take their business elsewhere", as there may be many alternative suppliers. Of course, this reality also affects the providers' unionized employees, who must be equally sensitive to potential concomitant job losses that may follow an extended work stoppage.

The simple truth is that there is often no alternative supplier for a public sector service-provider, and persons who rely on these services are denied access to them during a work stoppage while, at the same time, they remain obliged to continue to pay for, through their taxes, the services not being received. A public sector labour dispute does not impose economic costs on the employer (indeed, often, there are substantial labour cost savings while the work stoppage continues), but does impose economic costs on the striking workers in the form of lost wages and benefits while the strike continues. Since members of the public have few, if any, alternative suppliers, there are also substantial costs imposed on them. This, in turn, frequently leads to substantial *political* costs being imposed on the public sector employer,[5] and therein lies the employer's principal motivation to resolve the labour dispute. Politics often prevails over rational economic policy (one, but only one, explanation for the sorry debt-ridden state of governments all across this country). This fact, in turn, imposes a further cost on taxpayers, namely, the significant wage premium (generally estimated to be at least 10%, and perhaps as high as 20%) paid to public sector workers relative to private sector workers who are working in essentially identical jobs. Rigorous empirical studies also show that public sector employees' non-wage compensation is also generally much higher relative to comparable private sector employees, even when controlling for union status.

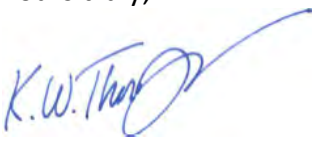
The existing "essential services" provisions in the *Code* are cumbersome, and do not adequately address public harm. In public education, for example, students lose valuable classroom time, and parents of younger children scramble to find expensive childcare, hire tutors for their children, and/or are forced to take unpaid leave from their jobs. Work stoppages in the post-secondary sector can lead to students facing delayed completion of their degree programs, and delayed entry into the labour market. In public healthcare, where labour shortages are now very prevalent, even existing labour complements often fall short of what would otherwise be appropriate "essential" levels.

While the Supreme Court of Canada has endorsed the right to strike as a *Charter*-protected right for public sector employees, the court certainly did *not* rule out alternative dispute resolution procedures such as interest arbitration. It is perhaps time to at least consider an alternative model, say, initially in healthcare and public education. Collective bargaining would

[5] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 127.

be preserved, but in the event of an impasse, the dispute would be placed before a tripartite board (one representative from labour, another from government, and a neutral chair selected by the other two representatives). This panel would serve for a fixed-time frame (I suggest 3 years) so that experience and expertise could be gained over the panel's tenure, and this would also tend to enhance consistency and fairness in wage outcomes. At impasse, both parties would be required to put their final offers before the panel (fully costed, and also available to the public, with costs reviewed for accuracy by a third party – I suggest utilizing the services of the provincial auditor general). The panel would then be free to impose a settlement consistent with conventional, not final offer, interest arbitration. This option preserves collective bargaining, protects the public interest, and guarantees an independent and fair dispute resolution procedure where there is an impasse.

Yours truly,



Kenneth Wm. Thornicroft
Professor of Law & Employment Relations

Submission to the *Labour Relations Code* Review Panel on behalf of Harris & Company LLP

March 22, 2024

Vincent P. Johnston

HARRIS & COMPANY

Harris & Company LLP ("Harris") is one of Western Canada's largest workplace law and advocacy firms. Harris represents a wide variety of clients, both provincially and federally regulated, in virtually every sector of the economy in British Columbia. In its role, Harris is well situated to provide input within the purview of your Committee, which is described in section 3(1) of the *Labour Relations Code* ("*Code*") as follows:

> 3(1) 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 which 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.

The submissions which we provide herein are responsive to the above-described mandate.

I. MANDATE OF THE REVIEW PANEL

In correspondence to the labour relations community dated February 2, 2024, the Review Panel advised that its terms of reference arose from the Premier's December 7, 2022 mandate letter to the Minister of Labour which included the following direction:

> "Ensure our labour law is keeping up with modern workplaces through the upcoming review of the *Labour [Relations] Code*, providing stable labour relations and supporting the exercise of collective bargaining rights."

As a result of that mandate letter, the Review Panel "has been directed to address the issues canvassed with and by stakeholders, taking into consideration section 2 of the *Code...*"

In *Re Judd*, [2003] BCLRBD 63 ("*Judd*"), a plenary panel of the Board identified section 2 of the *Code* as providing "the guiding principles for all *Code* provisions" (at para. 15). The *Judd* decision also supports the following propositions:

- Section 2 is now a "duties" provision rather than a "purposes" provision as it was formerly. (para. 15)

- Section 2 sets out "a comprehensive view of labour relations which is to be followed by the Board and others who exercise and perform duties under the *Code*." (para. 18)

- It sets out a vision of labour relations which: describes the goals of the system to the immediate parties; places those goals within a larger, societal context; and, emphasizes the mechanisms by which to proceed towards those goals. (para. 18)

Various subsections of section 2 recognize the rights and obligations of employees, employers and trade unions (s. 2(a)); address the *Code's* preferences as to how the employer and the union are to meet the challenges they face; ranging from adapting to changes in the economy to how parties are to resolve their workplace issues and generate a productive workforce (s. 2(d)); promote conditions favourable to the orderly, constructive and expeditious settlement of disputes (s. 2(e)); and, minimize the effect of labour disputes on persons who are not involved in those disputes (s. 2(f)).

As noted in the *Judd* case at paragraph 23, section 2 places all of these matters in the larger public interest. As set out in your letter of February 2, 2024, the Review Panel must approach its task with due regard for the provisions of section 2 of the *Code.*

II. NON-TARIFF BARRIERS TO INVESTMENT

Academic writers have often noted that the existence of constitutional authority in each province over the issue of labour relations is beneficial in that each provincial jurisdiction provides a "laboratory" for innovation in labour law reforms. However, these accolades are often tempered with the observation that these "laboratories" have produced provincial labour legislation of almost uniform content throughout Canada.

In recognition of the important role that labour legislation can play in the economy of a province, caution must be exercised by recognizing that too much deviation from the "norm" of labour relations law in Canada can result in significant non-tariff barriers to investment. An economy which is subject to significant labour law fluctuations which deviate from the "norm" can, and in our respectful submission will, characterize a province as too much of an outlier on issues of labour law that investors will view the province as exhibiting an instability. A modern economy cannot thrive and grow if the province is viewed as an unstable place to invest.

The issues which we identify below are examples of the types of innovation which can amount to a non-tariff barrier to investment in British Columbia.

Expansion of Picketing Rights

In recent proceedings at the Labour Relations Board ("Board"), certain unions have purported to rely upon "virtual picket lines". The fundamental premise of a virtual picket line is that, once a union is on strike, it can simply communicate an edict to its members to the effect that they are prohibited from going to work in a geographic area, regardless of the particular location where they work. Presumably, this edict would be buttressed by the notion that a failure to comply with the virtual picketing edict could result in discipline, up to and including the removal of membership, pursuant to the union's constitution and bylaws.

This approach to "picketing" is irreconcilable with the purpose of picketing which has long been recognized in Canadian labour relations jurisprudence. It is also antithetical to the Board's long standing recognition of the careful balancing of rights contained within Part 5 of the *Code*.

In *RWDSU, Local 558 v. Pepsi Cola Canada Beverages (West) Ltd.*, 2002 SCC 8 ("*Pepsi Cola*"), the Court commented:

> 27. In labour law, picketing is commonly understood as an organized effort of people carrying placards in a public place at or near a business premise. The act of picketing involves an element of physical presence, which in turn incorporates an expressive component. Its purposes are usually two fold: first to convey information about a labour dispute in order to gain support for its cause from other workers, clients of the struck employer, or the general public; and second, to put social and economic pressure on the employer and, often by extension, on its suppliers and clients…(emphasis added)

This view of the purpose of picketing is shared with the public on the Board's website which describes picketing as follows:

> Picketing is when an employee attends the place they normally perform work and attempt to persuade people not to:
>
> - enter the place of business, operations, or employment
> - deal in or handle the employer's product
> - do business with the employer

In the *Pepsi Cola* case, supra, the Court identified that picketing is a fundamental aspect of free expression in the labour context. The Court commented (at para. 32) that the exercise of freedom of expression in the form of picketing in the labour context is necessary to ensure that an individual employee's rights of freedom of expression are respected. In the labour context, picketing promotes the core values of self-fulfillment, participation in social and political decision making, and the communal exchange of ideas. The protection of picketing as free speech protects the individual employee's human dignity and the right to think and reflect freely on their circumstances and condition. It allows the employee to not only speak for the sake of expression itself, but to also advocate for change, attempting to persuade others in the hope of improving one's life and perhaps the wider social, political and economic environment.

Permitting a "virtual" picket line, which does not require the physical presence of the employees exercising their freedom of expression is contrary to the values that picketing is intended to protect in a labour relations context. The notion that a physical presence is required is also expressed in the definition of picketing which requires that employees "attend" at or near an employer's place of business. Without the act of physical attendance at a location, picketing is bereft of expression and ought not to be permitted.

In light of the foregoing, the *Code* should clarify in more detailed language the requirement of a physical presence of employees for the purposes of exercising their freedom of expression.

Enhanced Successorship

On August 31, 2018, a previous iteration of a *Labour Relations Code* Review Panel ("2018 Panel") issued its report addressing, amongst other things, the application of the successorship provisions of the *Code* to the tendering and re-tendering of contracts.

In making its recommendations on this issue, which were largely accepted, the 2018 Panel relied upon what it referred to as "a number of disturbing anecdotal stories of the effects of contract re-tendering in healthcare". These anecdotal recitations of harm were then presumed to be applicable in the re-tendering of contracted services in other areas such as building cleaning, security, food, and bus services. This recommendation, as well as others, was characterized, in the Government's press release of October 25, 2018 as being a recommendation being intended to "restore balance and fairness". It provides certain trade unions and employees with a form of tenure.

Unfortunately, it has not achieved its goal of balance and fairness. The anecdotal evidence from our clients supports the following scenarios:

1. Contractors and their employees have found their interests in increased wages to be aligned. Employees seek wages far beyond the wage levels the job functions would merit in a free market and their employers ("Contractors"), acting complicitly, agree to those changes knowing that they will likely be able to pass on those increased costs to the contracting party who cannot avoid these increased costs because of this tenure, thus increasing the Contractor's profit margins. There is not much downside to the Contractor in taking such an approach because it knows that, even if it has priced itself out of a free market, the client is likely to agree to increase the net value of the contract because they know that, even if they re-tender the contract, that cost structure willingly given up by the Contractor cannot be interfered with. The net result is that there is no market inhibition on increasing costs because, as a result of the successorship amendments, those costs are fixed, no matter who performs the contract. This is neither fair nor balanced. This is counter to section 2(b) of the *Code*.

2. In addition, and again relying up on the same type of anecdotal evidence relied upon by the 2018 Panel, this approach to successorship whereby certain contracts are permanently attached to a business, preserves the ability of inefficient Contractors to remain in business. Given the amendments to the *Code*, an inefficient Contractor knows that there is a diminished prospect of being replaced given that their workforce, along with their collective agreement, will simply continue to bind the contracting party.

In our submission, if successorship on the tendering and re-tendering of contracts is to remain a feature of the *Code*, then the appropriate approach was that identified in the 2018 Panel's observation that, in Nova Scotia, such a successorship declaration is available when the employer contracts out in order to defeat or undermine collective bargaining rights or avoid collective agreement obligations. This approach would address the anecdotal evidence relied upon by the 2018 Panel.

Section 104 – Expedited Arbitration

The issue of expedited arbitration was addressed both by the 1992 *Labour Relations Code* Review Panel ("1992 Panel") and the 2018 Panel. Those recommendations, as necessary as they are viewed in some quarters, were all made premised upon the presumption that those seeking access to expedited arbitration would be acting in "good faith". This has not been the case.

The objective data with regard to the usage of section 104 will be available from the Board. We believe it will support the following conclusions. Firstly, particular trade unions will file an excessive number of expedited arbitrations at the same time, a tactic referred to by some of our clients as "grievalanche" – knowing that such a process will require the employer to invest significant time and energy in investigating the matters only to have the union subsequently withdraw them. Our clients' anecdotal experience is that these "grievalanches" are often launched at a time when there are other proceedings at the Board or as a prelude to collective bargaining, thus requiring the employer to minimize the resources it can devote to the proceeding before the Board, or the bargaining table, in order to be compliant with the expedited arbitration process. In short, expedited arbitration is being used as a tactic to further other ends, rather than as a bona fide methodology for the quick and efficient resolution of outstanding matters in the workplace.

In order to rectify this insidious tactic, the *Code* should be amended to place a limit on the number of expedited arbitrations which can be filed on a single occasion, supplemented by a limitation on the number of expedited arbitrations which can be in process by a single party under section 104 at any one time.

Decertification Votes

As previous review panels have noted, the *Code* attempts to achieve "balance" and fairness in its administration. However, notwithstanding the elimination of a representation vote to canvass the wishes of employees on a certification application, section 33(2) of the *Code* requires a representation vote on every application for decertification. This is neither fair, nor balanced, and this vote should be eliminated. The process to unionize and the process to decertify should mirror each other.

III. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT (DECLARATION ACT)

Successorship in the Forestry Sector

The 2018 Panel addressed concerns advanced by unions representing forestry workers that were asserting that a transfer of cutting rights should result in a successorship. To address those concerns, the 2018 Panel recommended an Industrial Inquiry Commission ("IIC") to review the forest industry.

On November 9, 2021, the IIC was appointed with terms of reference obliging the IIC to consider what mechanisms may exist to address the protection of collective bargaining rights in certain circumstances, including:

- taking back harvesting volume for reconciliation.

The IIC issued its report on February 10, 2022. The report contained a section acknowledging that Canada was signatory to the United Nations Declaration on the Rights of Indigenous People, ("UNDRIP"), noting that it had become the framework for reconciliation at all levels across all sectors of Canadian society. In 2019 the government of British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)* which affirms the application of

UNDRIP through the laws of British Columbia and sets out the province's framework for reconciliation and its process to align British Columbia laws with UNDRIP.

The IIC noted that Indigenous Groups had expressed concerns that the IIC process was inconsistent with the *Declaration Act*. Those Indigenous Groups, relying upon both the *Declaration Act* and UNDRIP, took the position that the provincial government was obliged to engage meaningfully in consultation with individually affected Indigenous Nations on matters that could affect their rights, and to obtain those Indigenous Nations' free, prior and informed consent before making changes to affect those rights. The Indigenous Groups' entities took the position that they were not "just another stakeholder" in the IIC. Notwithstanding that no such "nation to nation" discussions had yet occurred, the IIC made certain recommendations regarding the issue of successorship upon tenure transfer arising from reconciliation efforts.

On behalf of our Indigenous clients, we note that no such "nation to nation" consultations have taken place subsequent to the IIC report. This is inconsistent with UNDRIP and, therefore, inconsistent with the Government's legal obligations. To pass a law relating to successorship arising from reconciliation without "nation to nation" discussions is a failure to uphold the rights of Indigenous Peoples as recognized by UNDRIP and the *Declaration Act* and is inconsistent with the provincial government's existing legal obligations to consult meaningfully.

The mandate of your Committee includes a direction that consultation with Indigenous parties is central to the review process. However, consultation with your Committee will not satisfy either UNDRIP or the *Declaration Act*. There must be independent "nation to nation" consultations. This task cannot be delegated either to the IIC or to your Committee.

The Government's obligations under UNDRIP and the *Declaration Act* cannot be treated as mere words on paper to be ignored when it is convenient to do so. Article 27 of UNDRIP recognizes the right of Indigenous Peoples to participate in an open, fair and transparent process to recognize their rights pertaining to their lands and resources. This is yet to occur and, until it does occur, your Committee should refrain from offering any further suggestions or commentary inconsistent with the rights of Indigenous Peoples and, in particular, should note in your report that "nation to nation" consultations have not yet occurred. These are a necessary prelude to successorship changes.

IV. FIRST AND LAST WORDS

When the Government announced on February 1st the appointment of the Panel it said that:

> "This review will help ensure B.C.'s labour laws keep up with the needs of today's workplaces, provide stable labour relations and support peoples' collective bargaining rights."

As Mr. Vaughn Palmer stated in his op ed on March 14, 2024, following the announcement there "came a surprise". That surprise was buried at the back of the *Miscellaneous Statutes Amendment Act* 2024 (Bill 9). To quote Mr. Palmer, that "sneaky significant move" was an amendment to the definition of strike under the *Code*. That amendment directly addressed a decision of the Board with which our firm is particularly familiar.

We are aware that the Business Council of B.C. and others have written to the Minister expressing the employers' communities concern regarding the amendments. They have identified the "significant economic and financial implications" arising from the amendment. The amendment will undoubtedly spread the effects of labour disputes rather than minimizing them.

Our clients, employers in this province, are rightly concerned about the "significant economic and financial implications" of the amendment. The province had negative private sector growth between 2022 – 2023, whereas all other provinces experienced growth ranging from 3.3% to 4.6%. The economic outlook for 2024 is not bright and the lift to the economy given by large-scale public projects is winding down along with the projects (January 2024, BCBC Economic Outlook).

Given that environment, our clients wonder why the Government felt this was an appropriate time to implement another non-tariff barrier to investment in the province. Of course, many clients wonder whether any thought, at all, was given to the economy or whether a more myopic view, the desire to give a "win" to a trade union in an election year, determined the timing of the amendment.

Our clients are also concerned that this amendment upsets the careful balancing of rights and interests contained within Part 5 of the *Code* and, furthermore, how the Government can plausibly reconcile the amendment with section 2(f) of the *Code*:

> "[minimize] the effects of labour disputes on persons who are not involved in those disputes"

One only needs to consider the implications of the amendment on an entity like the Vancouver Airport Authority (or any one of the other airport authorities) with its mix of many employers, both provincially and federally regulated, both union and non-union, to understand that the amendment will have significant implications for entities other than the ones involved in the dispute that led to the amendment. The Government missed the big picture. The Government's desire to undo a decision that was based on a particular set of facts creates a "cure" that is worse than the "disease".

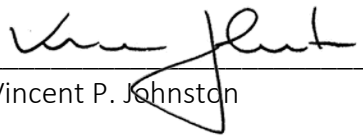
Finally, we convey to this Panel the significant concerns of our clients regarding the impact of the timing of the introduction of this amendment. The fact that the Government decided, on the eve of the Panel's process, to engage in such blatant political maneuvering undermines the very legitimacy of the Panel and the outcome of its processes.

Our clients have seen this Government in action before, following the 2018 Panel's recommendations, and are concerned about the Government's motivations. Mr. Barry Dong of our firm was in the majority with respect to the 2018 Panel's recommendations to keep the secret ballot vote in place for certification matters. And yet, a short while after, without any consultation or identification of a need for a change, the Government undercut this one recommendation.

Currently, the fact that the Government did not even bother to wait a respectable period of time after this Panel issues its report to force through this amendment to the *Code* bodes ill for this process and speaks to this Government's disregard and disrespect for the Panel and its process. Transparency, inclusivity, and a respect for procedural fairness are all called into question by the Government's action. The Government's action does not instill confidence in our clients regarding this review.

These comments are not meant as any form of denigration of the character and reputation of the members of this Panel. Our firm has the utmost respect for each member of the Panel. Instead, the comments are only meant to address the dark cloud that now hangs over this Panel and which, we fear, no amount of fair winds will be able to dispel.

All of which is respectfully submitted on behalf of Harris & Company LLP.



Vincent P. Johnston

Labour Relations Code Review

SUBMISSION TO THE SPECIAL ADVISERS TO THE MINISTER OF LABOUR

HOSPITAL EMPLOYEES' UNION

INDEX

I. INTRODUCTION

The Hospital Employees' Union ("HEU") has offices and represents members in many traditional territories in all regions of British Columbia. HEU and its staff are honoured to live and work on these lands and are committed to reconciliation and decolonization of their services and advocating for the same in the British Columbia health care system.

HEU welcomes this opportunity to propose changes to the *Labour Relations Code*, RSBC 1996 c.244 (the "*Code*") that will help bring equality and fairness to the *Code* which so greatly impacts our members' working and caring conditions.

HEU's submission will focus on the revision recommendations that are most vital to our members. HEU also supports the submissions of the BC Federation of Labour and the Canadian Union of Public Employees ("CUPE"), of which HEU is the health care division.

HEU is the oldest and largest health care union in British Columbia, representing more than 60,000 members working for public, non-profit and private employers.

Since 1944, HEU has been a strong, vocal advocate for better working conditions for our members and improved caring conditions for those who access health care services.

HEU members work in all areas of health care – acute care hospitals, residential care facilities, community group homes, outpatient clinics and medical labs, community social services agencies, and First Nations health agencies – providing both direct and non-direct care services.

With the onset of the COVID-19 pandemic in 2020, our members and health care workers across the globe were stretched thin and experienced many challenges, including health risks from exposure to COVID-19 cases, increased workloads, staffing shortages, and limited access to personal protective equipment. These challenging times highlighted areas of the *Code* that need to be revised.

One significant recent amendment, the reinstatement of automatic certification (or "card check") in 2022, has had immense positive impacts on the rights of workers by strengthening their right and ability to join a union. Where HEU has sufficient membership support, automatic certification has allowed certifications to be granted efficiently and expeditiously.

HEU requests the opportunity to present its submission orally during the hearing on April 5, 2024 in Vancouver.

II. BACKGROUND

The history and context of contracting out in the health care sector is needed to understand HEU's recommendations and the impact the 2019 revision to the *Code* had on its members.

Beginning in 1974, HEU engaged in extensive organizing in residential long-term care ("LTC"). At the time, HEU secured many separate, standalone certifications. Various developments to the health care sector in the early 1990s included the creation of a single-employer organization in health care and the creation of five provincial multi-employer bargaining units in the health sector.

The single-employer organization in health care is the Health Employers Association of British Columbia ("HEABC"). Deemed public health sector employers by the Lieutenant-Governor-in-Council by regulation must become members of HEABC. The five provincial sectoral bargaining units include all unionized members of HEABC. Trade unions with members working for these employers bargain with HEABC as members of bargaining associations.

One of these bargaining units is the Health Services and Support – Facilities Sub-sector ("Facilities Subsector") which is defined to include the LTC sector. HEU has the majority membership in the Facilities Subsector and is the lead of the Facilities Bargaining Association.

However, this broad-based bargaining structure in the LTC sector didn't last. In 2002, the *Health and Social Services Delivery Improvement Act,* SBC 2002 c.2 was passed ("*Bill 29*"). Shortly after in 2003, the *Health Sector Partnerships and Agreement Act*, SBC 2003 was passed ("*Bill 94*").

This legislative framework facilitated widespread privatization of services through contracting out from public sector standard agreements. *Bill 29* removed negotiated prohibitions on contracting out and declared void any future language prohibiting contracting out. It also suspended the application of the *Code*'s "common employer" and "successorship" provisions and imposed a more stringent test for "true employer" declarations.

Together, Bills 29 and 94 ensured that when work was contracted out, the master collective agreement and union certification did not follow. Under this legislation, LTC employers that were included in the sectoral bargaining regime could contract out and their contractors were not required to engage in sectoral bargaining.

This resulted in a "fissured" LTC sector comprised of "fissured" workplaces and fragmented collective bargaining for HEU members. It helped entrench a pattern of standalone bargaining units in LTC.

A second development of fissuring of bargaining units in LTC occurred in 2009, when the government allowed employers to apply for removal from the *Health Employers Regulation* and to withdraw or "de-accredit" from HEABC. This resulted in applications by many LTC employers to be removed from the sectoral bargaining regime created in the sector in the 1990s.

A third development was the expansion of complex, layered structuring by large national and multinational corporations in B.C. health care.

This expansion began in the 1980s, but along with the wholesale, province-wide restructuring

of work facilitated by Bills 29 and 94 came more and more complex corporate structuring. The putative "employers" of HEU members increasingly became small, often site-specific entities within these sprawling corporate families in which large, dominant members, some of them global in scale, oversaw and directed business.

And increasingly, these corporate families operated outside the public sectoral bargaining regime (by avoiding having their constituent entities designated as "public sector employers", de-accrediting, and contracting out).

The fragmentation is clearly demonstrated by the number of LTC sites and bargaining units represented by HEU in 2001 in comparison to 2024.

In 2001, HEU represented 51 bargaining units at 191 sites, 47 of which were single-site, standalone bargaining units.

Today, HEU represents 107 bargaining units at 229 different sites, 100 of which are single-site, standalone bargaining units. Between 2001 and 2024, HEU has seen the number of single-site, standalone bargaining units more than double.

The number of single-site, standalone bargaining units has continued to increase, despite the 2019 amendments to the *Code*. HEU has attempted to counteract this fragmentation in respect to private employers though common employer applications.

However, the Board has had difficulty in deciding these applications, given the opaque, complex corporate structuring. If HEU was successful in getting a common employer declaration it was a protracted and costly process.

In November 2018, the *Health Sector Statutes Repeal Act (Bill 47)* passed, which repealed Bills 29 and 94 in their entirety. This, in combination with the 2019 amendments to the *Code*, began to repair the damage and dysfunction contracting out and contract flipping caused in the health sector. However, there is still more work to be done.

III. STRENGTHENING WORKERS' RIGHTS

HEU submits that the following proposed amendments would serve to further strengthen and safeguard workers' rights under the *Code*.

a) Expand successorship to remedy contracting out

For more than two decades, contracting out has undermined workers' rights and eroded the quality of public health care in B.C. Beginning in 2002, the implementation of *Bill 29* led to the layoff of thousands of HEU employees in a few short years.

This legislation had a devastating impact on HEU members, many of whom found themselves unemployed and having to "apply" to a contractor for their same job at the same facility but for a fraction of the pay.

Only recently, more than 20 years later, has HEU's persistent advocacy finally seen the repatriation of contracted workers in the public health sector.

Prior to the 2019 amendments to the *Code*, successorship was limited to when a part of a business was sold, leased or transferred under section 35(1).

In health care, section 35(1) was limited by *Bill 29* and *Bill 94*. Specifically, section 6(5) of *Bill 29* expressly stated that the successorship provisions in the *Code* did not apply to a service provider who entered into a contract with a health sector employer.

Bill 94 precluded a finding of successorship when a designated private sector partner contracted out, or where a contractor at a designated health care facility subcontracted.

Together, section 35 jurisprudence and *Bill 29* and *Bill 94* effectively withheld successorship protection from unionized employees in the health sector, and at most seniors' care facilities when their work was contracted out.

The 2019 amendments to the *Code* saw a necessary and long overdue amendment to section 35. The 2019 amendment coupled with *Bill 47* saw contract re-tending in the health and other sectors constitute a successorship under section 35 of the *Code*.

Now, when a "contract for services" is re-tendered, i.e. changed from one contractor to another who is performing substantially similar services, a successorship is deemed to have occurred under section 35(2.2).

A "contract for service" is defined in section 35 of the *Code* as:

(a) building cleaning services;

(b) security services;

(c) bus transportation services;

(d) food services;

(e) non-clinical services provided in the health sector; or

(f) services prescribed under section 159 (2) (f);

Section 159 (2)(f) gives the Lieutenant Governor in Council the power to prescribe services in a particular sector for the purposes of the definition of "contract for services" in section 35.

While the 2019 amendments began to address the fracturing of the health sector, they did leave a number of gaps. They are:

1. initial contracting out by health sector employers is not a successorship under the *Code*; and

2. workers who are repatriated (brought back in-house) from being contracted out are not protected.

The 2019 amendments only add successorship protections to contracts that are "re-tendered". There remain no protections when work is initially contracted out.

This is a gap that allows the continued fracturing of the health care sector and the same harm to workers that was caused by Bills 29 and 94 to continue.

Where a facility owner or operator decides to bring contracted services back "in-house," and directly employ staff to perform services previously performed by the contractor (this is sometimes referred to as "repatriation" or "recaptured work"), a successorship has not occurred under the current *Code* provisions.

Unfortunately, the Labour Relations Board has interpreted the 2019 amendments narrowly such that successorship protections do not extend to repatriation situations.

In *Health Employers Association of British Columbia on Behalf of Provincial Health Services Authority v Sodexo Canada Ltd*., 2023 BCLRB 20 ("Red Fish"), United Steelworkers Local 2009 applied under section 35 of the *Code* to have the Provincial Health Services Authority ("PHSA") declared the successor employer to Sodexo, the previous contractor at Red Fish Healing Centre for Mental Health and Addiction.

PHSA and BC General Employees' Union ("BCGEU") objected to the application, arguing that returning to an in-house provision of services model from a contracted-out model merely involves an operator changing the way it carries on its own business and is not the acquisition of another entity's business.

PHSA also argued that the new legislative provisions (referring to the 2019 amendments to the *Code*) were meant to address contract flipping. They pointed out that the contract had not been re-tendered to another contractor, but rather brought back in-house, and therefore section 35(2.2) of the *Code* did not apply.

The Board in Red Fish found that section 35(2.2) was drafted in such a way as to address contract flipping only, and that it was "designed to prevent the deleterious impact on employees and unions when customers in certain industries cancel contracts with unionized service suppliers." (para 26). Therefore, 35(2.2) does not protect workers in cases of repatriation.

Since 2019, HEU has seen five sites repatriated. In the absence of successorship protections, repatriation of work is leading to the loss of jobs. Even when employees are re-hired into the same roles, they nonetheless lose accrued seniority and benefits.

Indeed, repatriated employees typically find themselves reporting to the same facility to perform the same work they have done for years, only now on a probationary basis due to

their re-set "start date". Where the repatriating employer is not certified, rehired employees are deprived not only of their previous collective agreements, but of union representation altogether.

This is the same mischief in the same industry that the 2019 amendments were meant to protect against and address. This is especially important in the health care industry given the long-lasting impacts of Bills 29 and 94 in fragmenting the health care sector.

The disruption to workers occasioned by the recapturing of work compromises the continuity of care. This is profoundly damaging to patients and seniors, particularly in the residential long-term care sector. The combination of initially contracted-out workers and repatriated workers not being provided successorship protections can be used as a tool to skirt unionization.

If the recapturing employer is not unionized, the union is in the position to now organize the new worksite, which can be challenging considering the chilling effect this type of action has on organizing.

If the recapturing employer is already unionized, any questions around the identity of the bargaining agent can be easily resolved by established Board policy. For example, in the case of the recapturing employer already being unionized, the Board could apply the policy that applies to the merging of two bargaining units.

These gaps in the *Code* mean that, as was the case with *Bill 29*, HEU members are again finding themselves unemployed and having to re-apply for their same positions at the same facilities, to be rehired (or not) only at the whim of a new employer, and to be stripped of their seniority and benefits.

HEU strongly supported the amendments proposed in 2019 which ensured that the re-tendering of contracts in the health sector (and elsewhere) would be deemed to constitute a successorship under the *Code*. But further protections in this vein are needed to address the harms of Bills 29 and 94 that remain unresolved.

HEU therefore proposes the following amendments to section 35 of the *Code*.

RECOMMENDATION 1

Amend section 35(2.2) and add section 35(2.3) of the *Code* to read:

35 (2.2)If a contract for services is **<u>tendered or</u>** re-tendered, and substantially similar services continue to be performed, in whole or in part, under the direction of a ~~another~~ contractor

a. the contractor is bound by all proceedings under this *Code* before the date of the contract for services is entered into by the contractor and the proceedings must

continue as if no change had occurred, and

b. any collective agreement in force continues to bind the contractor to the same extent as if it had been signed by the contractor.

(2.3) If a contract for services ends and substantially similar services continue to be performed, in whole or in part, under the direction of the recapturing employer

a. the recapturing employer is bound by all proceedings under this Code before the date the services are recaptured and the proceedings must continue as if no change had occurred, and

b. any collective agreement in force continues to bind the recapturing employer to the same extent as if it had been signed by the recapturing employer.

b) Extend statutory freeze period to assist concluding first collective agreements

Negotiating a first collective agreement can be challenging. The parties are typically starting from scratch and attempting to codify the terms and conditions of employment in an inchoate bargaining relationship.

In the Union's experience, hostility and mistrust born in the organizing process can carry over into the negotiation phase, prompting some employers to delay bargaining. Once the statutory freeze has expired, employers are free to alter the terms and conditions of employment in such a way as to gain an advantage at the bargaining table (e.g. by unilaterally lowering wages) or frustrate support for the union altogether.

Given that many first collective agreements in the health sector take multiple months and often well over a year to conclude, the continued existence of the 12-month time limit incentivizes delay, undermines unions' equal footing at the bargaining table, and increases the likelihood of employer interference and intimidation.

Across Canada, the statutory freeze time to bargain a first collective agreement varies. HEU submits that B.C. labour law is most similar to Ontario. In Ontario, the statutory freeze does not end until after the parties have met with a conciliation officer or mediator, or until the union has lost the right to represent the employees of the workplace (see section 86 of the *Labour Relations Act,* 1995, S.O., c.1).

The union therefore proposes the following amendment to section 45 of the *Code*.

RECOMMENDATION 2

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. (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. (b) subject to subsection (1.1), 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 bargaining agent for the unit, or~~

~~(ii)~~ a collective agreement is executed.

~~whichever occurs first.~~

c) Remove unlawful barriers to secondary picketing

HEU is an intervener in *Gateway Casinos & Entertainment Limited and BCGEU*, Case No. 72103/18 ("Gateway"). In Gateway, BCGEU is seeking a declaration that would let unionized workers picket at all of an employer's locations.

HEU supports this application and BCGEU's ask for a broader definition of "primary employer" than s.65(3) and 65(8) of the *Code* currently provide.

BCGEU makes the argument that the current *Code* provisions prohibiting picketing at sites operated by the employer other than those where struck work is performed are contrary to the *Canadian Charter of Rights and Freedoms* and are not saved by s.1.

This argument is supported by *R.W.D.S.U., Local 558 v. Pepsi-Cola Beverages (West) Ltd.*, 2002 SCC 8, [2002] 1 SCR 156 ("Pepsi-Cola") which found that restrictions on picketing are not appropriately based on location as the *Code* currently permits. In HEU's submission, restrictions must be aimed at wrongful action.

HEU understands the decision in Gateway is still outstanding. This review of the *Code* is an opportunity to remedy the unlawful provisions of the *Code* that incorrectly limit secondary picketing.

HEU represents thousands of members working in long-term care. The current *Code* provisions apply to limit picketing activity profoundly and severely in LTC due to complex corporate structuring and an entrenched pattern of fragmented bargaining units as described above.

In the LTC sector we have:

a. a proliferation of "employers" which are often small, workplace-specific, corporate entities embedded in complex corporate structures overseen and directed by the

larger and more dominant provincial, national or multinational components in those structures;

b. extensive contracting out; and

c. many employers that have withdrawn ("de-accredited") from the statutorily mandated sectoral bargaining regime under the *Health Authorities Act*, RSBC 1996, c.180 ("HAA").

In the sectoral bargaining structure, HEU members in the facilities subsector can picket multiple facilities during a strike and are not confined to the workplaces where they are employed.

In this context, bargaining units at each site (e.g. VGH, Royal Columbian) do not exist; site-specific units are all consolidated to form one province-wide unit, though the Labour Relations Board recognizes a notional "bargaining unit" for each of these "collective agreement employers" for the purposes of collective agreement administration.

Importantly though, recognition of these notional "units" has not restricted picketing in the context of the sectoral regime.

The broader-based bargaining that developed in health care from the 1970s through the 1990s mitigated or alleviated the effects that ss.65(3) and (8) would otherwise have had on picketing rights in the sector when they were introduced into the *Code* in 1987.

Because many LTC employers were covered by one standard collective agreement, and later by a statutorily mandated sectoral collective agreement, picketing was not limited to single sites when a dispute ensued following expiry of these agreements, despite the *Code* picketing provisions.

Today, HEU has some bargaining relationships in LTC with employers who own a single facility covered by a single collective agreement, or a number of facilities covered by a single collective agreement (like Golden Life or Good Samaritan).

But commonly, the contracts are with the small, site-specific corporate "employer" entities embedded in corporate family structures overseen by larger and more dominant components in these structures outside of the public sectoral bargaining regime.

These structures can be fissured even further when these small "employer" entities contract out care and other functions to contract service providers like WestCana and Pro Vita.

For example, HEU has 10 different bargaining units with CareCorp, nine of which are site-specific. In most certifications, the "employer" named in each certification is branded as a separate CareCorp entity, e.g. CareCorp at Eden, CareCorp at Finnish Manor, CareCorp at Lynn Valley, etc.

Under section 65(3) and (8) of the *Code*, in the event of a strike at one of the facilities, HEU members could not picket at any other CareCorp site or CareCorp headquarters that manage the operations of their facility/workplace.

HEU submits that section 65(3) and 65(8) of the *Code* are unconstitutional.

When considered in the contemporary labour context, especially in light of the contracting out in the health sector, these sections of the *Code* serve to suppress workers' voices.

In Gateway, Professor Rafael Gomez provided an expert report which was submitted to the Board on February 28, 2020 (the "Gomez Report"). The Gomez Report found: "The forces of corporate (re)structuring and the fissured nature of the contemporary workplace make current prohibitions on secondary picketing in the BC *Code* not only anachronistic" — *"they are weakening the very institution (i.e., collective bargaining) that these prohibitions are aiming to support"*. [Gomez Report, p. 48 para. 130, emphasis added]

Section 65(3) and (8) need to be revised to match the reality of modern-day corporate structuring. HEU supports the BC Federation of Labour's recommended revision regarding secondary picketing.

RECOMMENDATION 3

65 (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),

b. <u>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 that are substantially similar to the "work" noted at subsection 3 and, in all the circumstances, would provide a reasonable substitute for the public, or</u>

c. <u>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</u>

AND – delete 65(8)

d) Facilitate broader-based bargaining through multi-employer sectoral certifications

HEU again proposes (as we did in our submission to the 2018 *Code* review panel) that a single-issue commission be struck to examine possible *Code* amendments that would

provide for broader-based bargaining through sectoral certification or some other means.

In our submission to the 2018 *Code* review panel, we noted that there is historical precedent for multi-employer certification in B.C., dating from the early 1970s through to the early 1990s.[1]

We also noted that in their 1992 report to the Minister of Labour, Special Advisers Vince Ready and John Baigent (with Tom Roper in disagreement) recommended that multi-employer certification be re-introduced.[2] Ready and Baigent characterized their recommendations in this regard as an "attempt to address the peculiar difficulties that workers in small businesses encounter in seeking union representation," viewing these recommendations as "among the most important and most significant we are making".[3]

In her 1997 paper "Sectoral Certification: A Case Study of British Columbia",[4] labour lawyer and legal academic Diane MacDonald (as she then was) observed that "[s]ectoral certification is important to examine because, if implemented, it could make collective bargaining more accessible to women, workers with disabilities, immigrants and workers of colour."

In arriving at this conclusion, MacDonald noted that:

> … a number of academics have pointed to the structural biases in the New Deal model of collective bargaining. They argue that the New Deal model promotes the

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[1] As we described in 2018:

> Section 40 of the *Labour Code of British Columbia*, 1973, c. 122 provided for multi-employer certification where the unit sought by the applicant trade union was appropriate for collective bargaining, where the majority of employees employed by the employers were members in good standing of the trade union and where a majority of the employers consented to the representation of the unit by one trade union.
>
> This provision remained unchanged until about a decade later, when the government of the day enacted the *Labour Code Amendment Act*, 1984, c. 24. Section 5 of the *Act* amended Section 40 of the *Code* to provide that *all* employers covered by an application must consent to multiple employer certification and for representation votes.
>
> That version of Section 40 somehow survived the introduction of the *Industrial Relations Reform Act*, 1987, c. 24 and lived on until it disappeared when the *Industrial Relations Act*, RSBC 1973, c. 122 was repealed under *Bill 84* in 1992.
>
> In other words, sectoral certification was a feature of the *Code* in British Columbia for almost 20 years.

[2] "Recommendations for Labour Law Reform submitted by the Sub-committee of Special Advisers John Baigent, Vince Ready, Tom Roper" (September 1992).

[3] Ibid at p. 30. Our 2018 submission also included the following description from Ready and Baigent at p. 31 of the report:

> The model we recommend would be available only in sectors which are determined by the Labour Relations Board to be historically underrepresented by trade unions and where the average number of employees at work locations within the sector is less than 50. A sector has two characteristics: a defined geographic area (e.g. Marpole, Burnaby, the Lower Mainland or the entire province) and similar enterprises within the area where employees perform similar tasks (e.g. preparing fast food, child care, picking fruit or pumping gas). For example, a sector could consist of "employees working in fast food outlets in Burnaby".

[4] Diane McDonald, "Sectoral Certification: A Case Study of British Columbia" (1997) 5 CLELJ 243; 1997 CanLIIDocs 104.

> fragmentation of the working class by encouraging decentralized bargaining at the level of the individual workplace. This fragmentation results in the opportunity for some working people (predominately white men) to engage in collective bargaining while for other individuals (predominately women and people of colour) collective bargaining rights are illusory. To overcome this bias, these writers suggest that collective bargaining take place on a broader basis (i.e., across workplaces).[5]

As a union whose members belong disproportionately to marginalized groups, HEU can confirm firsthand the salutary, equity-enhancing effects of broader-based bargaining.

This is because, at least in some narrow respect, sectoral certification survives in the *Health Authorities Act*, RSBC 1996, c. 180 ("HAA"), Part 3 of which deems province-wide, multi-employer bargaining units as "appropriate" in much of the publicly funded health sector.

HEU members covered by the *HAA*'s sectoral certification regime – most of whom work in the "health services and support - facilities subsector" bargaining unit prescribed at s. 19.4 of the Act – today enjoy superior benefits.

These are secured through an efficient, cost-effective single-table bargaining structure that fosters industrial stability and mature labour relations between HEABC and its constituent members on the one hand, and the Facilities Bargaining Association and its constituent unions on the other.

Unfortunately, however, the *HAA*'s scope is quite limited. While the Act mandates sectoral bargaining for the entirety of what it defines as the "health sector", the Act's definition of the phrase is unintuitively restrictive – for the purposes of the *HAA*, it means only "all members of HEABC whose employees are unionized and includes their unionized employees…".[6]

In the result, this definition operates to exclude from the sectoral certification regime scores of single-site bargaining units in the long-term care sector, where employees perform vital, substantially publicly funded health care work for private employers and contractors.

For these care aides and support staff providing cleaning, dietary and laundry services in the LTC sector – an overwhelmingly female and racialized cohort – access to collective bargaining and the broader rights and protections of the *Code* is relatively difficult to achieve, requiring resource-intensive, site-by-site organizing campaigns followed by the negotiation of novel, standalone collective agreements that are invariably inferior to the province-wide comparator. Indeed, as a consequence of these difficulties many such worksites remain unorganized altogether.

HEU's experience affirms that sectoral certification does indeed improve access to the benefits of collective bargaining for workers in general, and for historically marginalized groups in

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[5] Ibid at 244, footnote omitted.

[6] HAA at s. 19.1. HEABC membership, in turn, is determined pursuant to the *Public Sector Employers Act*, RSBC 1996, c 384, and its subordinate Health Care Employers Regulation, BC Reg 427/94.

particular, while also promoting efficiency, stability, and a more collaborative approach to labour relations.

For these reasons, we suggest that the possible expansion of broader-based bargaining – both within the health sector and beyond – merits serious consideration by a dedicated, single-issue panel.

RECOMMENDATION 4

Appoint a committee of special advisers under section 3(1)(b) of the *Code* to examine and make recommendations as to possible amendments to the *Code* to provide for broader-based bargaining through sectoral certification.

IV. EQUALITY IN THE *CODE*

a. Bring the *Code* into alignment with the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP")

The *Declaration on the Rights of Indigenous Peoples Act* ("DRIPA") was passed by the provincial government in November 2019. DRIPA establishes UNDRIP as the province's framework for reconciliation and requires the updating of all existing legislation, including the *Code*.

There are specific provisions of the *Code* that require urgent revision to align with UNDRIP and recognize the rights of Indigenous Peoples.

HEU understands this unfortunately may not be within the scope and expertise of the present review under section 3 of the *Code*. This is a missed opportunity, and Indigenous voices and perspectives should be included in further reviews under section 3(5) of the *Code* as a major objective. In the future, all section 3(5) reviews should ensure panelists are equipped to review the *Code* from the perspective of furthering reconciliation.

HEU also strongly submits reconciliations and decolonization of the *Code* will be an ongoing process and a mechanism should be established to address issues as they arise.

RECOMMENDATION 5

Appointment of a committee of special advisers under section 3(1) to make recommendations on how to align the *Code* with UNDRIP. Also, all future reviews of the *Code* under section 3(5) must include reconciliation as a primary objective.

b. Mandate collective agreements to address the gender wage gap

Pay equity means equal pay for work of equal value. It's used to overcome historic wage discrimination in female dominated industries, like health care.

When HEU was first formed in 1944, women health workers were paid less than men for doing identical work. It's an injustice that health employers carried on into the early 1970s when LPNs were paid 30 per cent less than orderlies.

This discrimination continues today. British Columbia has one of the highest gender pay gaps in Canada. According to Statistics Canada, in 2022 women in B.C. earned 17 per cent less than men. The B.C. provincial government sought to close this gap when it passed the *Pay Transparency Act* in 2023. The goal of this legislation is to address systemic discrimination in the workplace and move closer to equal pay for equal work. This sentiment needs to be extended into the *Code*.

The vast majority of HEU's members identify as women (78 per cent) and many are racialized (31 per cent). As a sector dominated by racialized women, wage and benefit justice has always been an issue for health care workers and HEU has continued to advocate for wage equity for decades.

This advocacy has included successful human rights complaints, negotiating "anti-discrimination" pay adjustments with the government of the day and successful interest arbitrations, all with the goal of achieving pay equity.

However, pay equity remains an uphill battle for HEU members, many of whom continue to face gender-based wage discrimination. This was especially highlighted during the COVID-19 pandemic, where low-wage, front-line workers were required to take on the most significant health risks.

Pay equity does not only benefit workers. It also helps with recruitment and retention for employers as well as productivity, employee engagement and morale. In a sector that is chronically understaffed and essential to the functioning of our communities, pay equity is in the interests of all parties.

RECOMMENDATION 6

Add a provision to the *Code* mandating that all collective agreements entered into or renewed after January 1, 2025, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps.

If no process is included in the collective agreement, the parties to the collective agreement will have the explicit right to refer the matter to interest arbitration where an arbitrator can determine the process.

V. CONCLUSION

There are persistent barriers in the *Code* that infringe on the rights of health care workers. The amendments in 2019 did not fully address the harm created by Bills 29 and 94 and the contracting out in health care.

Addressing these concerns will foster the conditions necessary to provide the best care in our residential care facilities, community agencies, hospitals and other settings.

HEU thanks the Minister of Labour for the opportunity to provide this submission and the Review Panel for their work in this important area.

VI. SUMMARY OF RECOMMENDATIONS:

RECOMMENDATION 1

35 (2.2) If a contract for services is **tendered or** re-tendered and substantially similar services continue to be performed, in whole or in part, under the direction of a ~~another~~ contractor

a. the contractor is bound by all proceedings under this Code before the date of the contract for services is entered into by the contractor and the proceedings must continue as if no change had occurred, and

b. any collective agreement in force continues to bind the contractor to the same extent as if it had been signed by the contractor.

(2.3) If a contract for services ends and substantially similar services continue to be performed, in whole or in part, under the direction of the recapturing employer

a. the recapturing employer is bound by all proceedings under this Code before the date the services are recaptured and the proceedings must continue as if no change had occurred, and

b. any collective agreement in force continues to bind the recapturing employer to the same extent as if it had been signed by the recapturing employer.

RECOMMENDATION 2

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. subject to subsection (1.1), 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 bargaining agent for the unit, or~~

~~(ii)~~ a collective agreement is executed.

~~whichever occurs first.~~

RECOMMENDATION 3

65 (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),

b. 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 that are substantially similar to the "work" noted at subsection 3 and, in all the circumstances, would provide a reasonable substitute for the public, or

c. 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

AND – delete 65(8)

RECOMMENDATION 4

Appoint a committee of special advisers under section 3(1)(b) of the *Code* to examine and make recommendations as to possible amendments to the *Code* to provide for broader-based bargaining through sectoral certification.

RECOMMENDATION 5

Appointment of a committee of special advisers under section 3(1) to make recommendations on how to align the *Code* with UNDRIP. Also, all future reviews of the *Code* under section 3(5) must include reconciliation as a primary objective.

RECOMMENDATION 6

Add a provision to the *Code* mandating that all collective agreements entered into or renewed after January 1, 2025, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps.

If no process is included in the collective agreement, the parties to the collective agreement will have the explicit right to refer the matter to interest arbitration where an arbitrator can determine the process.


HOSPITAL EMPLOYEES' UNION
CUPE

Submission to the Labour Code Review Panel

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Independent Contractors and Businesses Association

ICBA
BC BUILT. BC STRONG™

March 18, 2024

Further to the February 2, 2024 invitation from the Panel to the labour relations community for submissions related to the Panel's review of the *Labour Relations Code*, the Independent Contractors and Businesses Association ("ICBA") is pleased to provide this submission. In addition, the ICBA would like to appear in person before the Panel on either May 6 in Surrey or May 7 in Vancouver.

By way of background, ICBA is the largest construction association in Canada. We're proud to represent more than 4,000 entrepreneurs, businesspeople, skilled construction professionals, independent contractors, sub-trades, and responsible resource development companies – who together employ more than 150,000 Canadians.

ICBA is the single largest sponsor of trades apprentices in British Columbia, with more than 2,000 people working toward their Red Seal accreditations. We also sponsor more female and Indigenous apprentices than any other group, association, union or business in B.C. Our group health, dental, and retirement business has more than doubled in the past few years, with more than 170,000 people relying on an ICBA Benefits plan. ICBA is also the industry leader in mental health services and public policy advocacy.

At the outset, we must note that our submission is relatively brief given the very short time frame provided for interested members of the labour relations community to offer comments. We also note that the government has given no indication of specific areas it wishes the Panel to explore in connection with possible further changes to the *Code*. Accordingly, we respectfully request that, as was done in 2018, an additional opportunity be provided to stakeholders to consider and respond to submissions to the Panel. Further, if the Panel decides to recommend significant changes to the *Code*, we suggest that these be outlined in an Interim Report, in order to give parties the opportunity to digest and respond to the recommendations.

The Economic and Business Environment

The current business environment in British Columbia is best described as fragile and uncertain. Many enterprises are struggling with significant debt, higher borrowing costs and reduced access to credit. Economic growth stalled last year after a solid 3.8% advance in real GDP in 2022. According to the 2024 B.C. budget, growth will barely reach 1% in 2024 and accelerate only modestly in 2025, even as the province's population continues to expand by at least 2% per annum. Rising business bankruptcies – up 142% in January on a year-over-year basis – are one sign of increased financial stress in the business community.[1] It is striking that private sector payroll jobs have scarcely risen at all in British Columbia since 2019, while public sector employment has soared by more than 20%.[2] These lopsided labour market dynamics are worrisome and fiscally unsustainable over time.

Last month, the chief economist of the Conference Board of Canada published an article on the "frail" Canadian economy and the risk of a prolonged period of stagnation.[3] Real per capita consumer spending is declining, even though overall employment has been growing. The national business environment, in the Conference Board's view, is "deteriorating dramatically." Aggregate business revenues have flatlined, "while financing costs and wages continue to climb." Many Canadian firms are grappling with high levels

[1] Innovation, Science and Economic Development Canada, February 2024.
[2] Business Council of B.C., B.C. Economic Review and Outlook, February 2024.
[3] Pedro Antunes, "A frail Canadian economy risks plunging into further turmoil," Globe and Mail, February 27, 2024.

of debt, and in goods-producing industries most are stuck with unusually large inventories with sales falling and "stock-to-sales ratios reminiscent of the early nineties recession." These observations apply to British Columbia as much as they do to Canada as a whole.

The next two years in particular will be a time when B.C. policymakers should be doing everything possible to shore up a struggling and – in some industries – shrinking business sector, and refrain from introducing policy measures that lead to higher costs and greater uncertainty for both small and medium-sized enterprises (SMEs) and the export-focused industries that largely underpin the province's prosperity.

This will require a shift in the provincial government's mindset and behaviour. Since 2017, government has been regularly adding fiscal and regulatory costs across the B.C. private sector. A study published last year by the Greater Vancouver Board of Trade concluded that from 2022 to 2024, "B.C. businesses are expected to pay a cumulative $6.5 billion in additional costs imposed by governments," with most of these attributable to decisions by the province.[4]

In truth, the Board of Trade's report significantly **underestimates** the true cost of government policy changes. That's because it does not systematically consider or quantify non-tax-related legislative and regulatory developments that have increased costs and complexity for parts of the private sector. Examples include many elements of the government's CleanBC plan, serial increases in the provincial minimum wage, other changes in the Employment Standards Act and regulations (such as, the introduction of a five-day sick pay rule), a host of new regulations adopted by WorkSafeBC, and a long list of environmental and land use policy measures that have impinged on access to Crown land and resources as well as the day-to-day activities of companies operating in the affected industries. We would also include the *Labour Code* changes made following the 2018 review (discussed below) and the B.C. government's sudden move, amidst the COVID pandemic in 2022, to scrap the secret ballot vote for union certification drives.

More recently, again absent any consultation or engagement with the employer community, the government has amended the *Code* to update and widen the definition of a "strike," such that labour disputes in industries falling under federal jurisdiction will now result in more disruptions to industries under provincial jurisdiction, thereby making it harder for some B.C. businesses to function during future strikes and lockouts in federally regulated sectors. ICBA is greatly troubled that this rash decision was made before the Labour Code Review Panel has completed its work. Further comments on this matter are provided later in this submission.

A Look Back: The 2018 Report

On August 31, 2018, the previous Panel (prior Panel member Barry Dong has been replaced by Ms. Thomson) issued a comprehensive report, *"Recommendations for Amendments to the Labour Relations Code"*, that considered a wide range of submissions from across the B.C. labour relations community (the "2018 Report")

[4] Greater Vancouver Board of Trade, Counting the Costs, 2023. This estimate does not include measures announced in the 2024 B.C. budget.

The 2018 Panel issued 29 formal recommendations. It also included several additional recommendations not to implement certain changes, notably in the areas of sectoral bargaining and certification and secondary picketing. More will be said on these issues below.

One of the key principles recognized by the 2018 Panel was the need to ensure an appropriate balance in labour relations legislation and avoid "pendulum swings" that render legislative changes unsustainable from one administration to the next. The Panel made the following comments on this important issue:

> *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.*[5]

The Panel's comments were sound and remain relevant to today's economic and labour relations environment. The need to avoid disruptive policy shifts was key to the 2018 Report and, ultimately, to the legitimacy and acceptability of the current process of reform of the *Code*. Inherent in this are several critical considerations: certainty; predictability; balance; sustainability; and investment and competitiveness.

The Panel's comments in 2018 also reflected the lessons learned from a review of British Columbia's labour relations history, as outlined in the 2018 Report and in the submissions made by the Joint Business Community in 2018.[6]

The Pendulum Has Indeed Swung

[5] *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, at p.7.

[6] See, for example, Joint Business Community Submission to the Minister of Labour, March 20, 2018 ("March 20, 2018, Joint Submission"), at pages 3-5.

The pendulum has now significantly swung out of balance as result of both the adopted 2018 recommendations as well as further legislative changes made by the provincial government that either exceed or, in one key instance, ignore the 2018 Panel recommendations.

i. The Adopted Recommendations

As noted above, the 2018 Panel made twenty-nine formal recommendations. Almost all were intended to enhance the rights of unions and their ability to seek certification of unrepresented employees. Virtually all the recommendations were adopted in some form by the government in the 2019 *Code* changes[7]. Some of the main ones were:

- Automatic successorship in certain sectors upon re-tendering of a contract[8]
- Increased discretion for the Labour Relations Board to impose remedial certifications
- Period between certification application and vote shortened to 5 business days
- Directed that raid periods in the construction sector occur in July and August of each year[9]
- Permitted applications to re-open collective agreements after a successful raid
- Excluded education as an essential service
- Removed strike vote requirement for access to first collective agreement mediation/arbitration
- Allowed employer conduct during certification process to be considered in the first collective agreement mediation/arbitration process
- Extended freeze on decertification applications
- Doubled validity of union membership evidence to 180 days

As can be seen from the above, the adopted recommendations were all intended to, and did, "swing the pendulum" – in some cases quite sharply – in one direction: toward organized labour and away from the interests and concerns of the entrepreneurs and small and medium-sized business owners who make up most of the province's private sector economy. With such significant amendments to the *Code*, one would ordinarily expect a period for the labour relations community to adapt to these changes and the impact on the affected businesses. The 2018 Report expressly recognized the wisdom of an incremental approach in several areas, most notably with respect to its recommendation to retain the secret ballot until the impact of the other "enhanced measures" could be assessed.[10]

Unfortunately, an incremental approach evidently did not suit the B.C. government.

ii. Additional Changes

In 2022, the provincial government swung the pendulum even further by making additional statutory changes to the *Code*.[11]

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[7] *Labour Relations Code Amendment Act, 2019* (Bill 30 - 2019)

[8] It is important to note that the actual *Code* change went beyond the Committee's recommendation. Specifically, the 2018 Report recommended that food services *in the health sector* fall within the scope of the automatic successorship provisions. The 2019 amendments to Section 35 do not have such a limitation, such that all "food services" without any further definition fall within the scope of the provision. This has already led to anomalous results. See, for example, *Sky Café*, 2023 BCLRB 61, application for reconsideration pending.

[9] But left in place the limitation that the raid period be in the final year of a three-year agreement.

[10] 2018 Report, p. 12

[11] *Labour Relations Code Amendment Act, 2022* (Bill 10 – 2022) ("Bill 10")

Elimination of the Secret Ballot

By far the most significant new change was to remove the right for employees to privately express their choice about union representation by way of a secret ballot for certification applications.[12] In taking this far-reaching and controversial step, the government ignored the majority recommendation from the 2018 Panel -- a recommendation that was guided by the need to maintain a balanced approach and proceed in an incremental fashion. The Panel articulated this balance as follows:

> *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 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.*[13]

There is no evidence that the "enhanced measures" referred to by the 2018 Panel have been ineffective, or that there have been a material number of unfair labour practice complaints or findings from the Labour Relations Board in this regard. In fact, the removal of the secret ballot short-circuited the balanced approach recommended by the Panel in 2018.

Given the lack of evidence that the enhanced measures have failed to address any concerns about employer interference, we submit that the current Panel should re-confirm its 2018 recommendation that the secret ballot be maintained (in present circumstances, restored), and that this fundamental democratic right should be reinstated to ensure that neither side in a certification drive is able to use intimidation or exert undue influence over the outcome.

As can be seen from the Labour Relations Board's recently published annual report,[14] the removal of the secret ballot has already had a major impact. There has been an enormous jump in certification applications and orders, with 2023 seeing the highest number of certification applications since 2001, when B.C. last had card-check in place. Over 90% of these applications resulted in certification orders. At the very least, the current Panel should take this very significant change into account when considering the "pendulum swing" that has occurred and whether the pendulum should be swung further.

Annual Raid Periods in the Construction Sector

The 2018 Report recognized the disruptive nature of raids in the workplace and noted that British Columbia was an outlier in Canada in this area. The Panel observed as follows:

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[12] *Ibid*

[13] 2018 Report, p. 12

[14] 2023 Annual Report of the British Columbia Labour Relations Board, published March 1, 2024

> *Although employees should have a right to change their bargaining representative, raids are divisive and disruptive to employers, unions, and employees. 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.*[15]

As a result, the Panel recommended that the raid period be eliminated for the first two years of any collective agreement, and then become annual after that in the seventh and eighth month of the agreement.

In response to submissions from the B.C. and Yukon Territory Building and Construction Trades Council and the Bargaining Council of B.C. Building Trades Unions, the 2018 Panel recommended that the raid period in the construction sector be legislated to be in July and August, rather than in the seventh and eighth months of the agreement. Both recommendations were accepted and implemented in the 2019 *Code* changes. However, in 2022 the government reversed, in part, the 2019 changes that had been recommended by the Panel and implemented an annual raid period in the construction sector beginning in the first year of the agreement.[16]

Enabling Federally Regulated Picketing to Harm British Columbia Businesses

As noted above, even during this current review, the government has introduced legislation that seeks to further swing the pendulum in favour of organized labour by tabling Bill 9.[17] These amendments to the *Code* will permit provincially regulated employees to refuse to cross picket lines set up by striking employees from federally regulated employers. This change is very ill-considered and will allow work stoppages outside the jurisdiction of the B.C. Labour Relations Board to spill over and potentially have a profound impact on provincially regulated businesses that are not involved in the labour dispute, yet who could have their operations shut down by federally regulated picketers with little or no recourse. These changes run directly contrary to the *Code* duty to "minimize the effects of labour disputes on persons who are not involved in those disputes."[18]

Bill 9 was tabled without any consultation with the labour relations community and without any opportunity for this Panel to seek submissions or assess its potential impact. We respectfully urge the Panel to take this most recent pendulum swing into account when considering whether the appropriate balance is being brought to *Code* reform.

The Current Review

In conducting its review, it is important for the Panel to consider the many amendments to the *Labour Relations Code* that have been made over a relatively short period of time and ensure that it is guided by the same principles it adopted and articulated at pages 6-7 of the 2018 Report.

The labour policy pendulum has shifted significantly, and the employer community is concerned that changes aimed at swinging the pendulum further will create a significant imbalance that will have a

[15] *Ibid*, p. 15
[16] Bill 10, Section 1
[17] Bill 9 – 2024, *Miscellaneous Statutes Amendment Act, 2024,* Section 57
[18] Section 2(f), *Labour Relations Code* [RSBC 1996] c. 244

detrimental effect on investment, jobs and business confidence in B.C. Any further amendments to the *Code* should only be contemplated if compelling evidence emerges to show that such changes are necessary to maintain balance in labour relations, or are needed to attract investment, jobs and opportunity. We are aware of no such evidence. Nor has the government provided any relevant evidence or other information on this matter.

Given the lack of any clear guidance in the terms of reference provided by the Panel on the nature, scope or scale of changes being contemplated, we are left to speculate as to what further *Code* changes are being sought by other parties -- or the government. Drawing on previous employer community submissions and other public statements, we will address two potential positions that may be advanced by some representatives or organized labour - sectoral certification/bargaining and secondary picketing.

i. Sectoral Bargaining/Certification

The mandatory imposition of a sectoral certification or bargaining scheme would be a profound alteration of the labour relations model in the affected sector. The labour relations community is already in the process of adapting to the significant pendulum swing brought about by the 2019 and 2022 *Code* changes. To now go further and proceed with sweeping structural bargaining changes in certain sectors would be highly destabilizing to businesses in these sectors and strip away all pretense of a balanced approach to labour relations in this province. Rather, any such series of *Code* amendments would be remembered as one of the periodic pendulum swings in B.C. history referenced by the 2018 Panel Report – developments inconsistent with "predictability, certainty or balance". Coupled with the breadth of the 2019 and 2022 *Code* amendments, the addition of mandatory sectoral bargaining would constitute one of the most dramatic pendulum swings the province has ever experienced.

As explained in the 2018 Joint Business Community submission, signed by thirteen (13) organizations representing every part of B.C.'s economy, the imposition of a legislated sectoral bargaining scheme undermines the rights of autonomy and self-determination protected by Section 2(d) of the *Charter of Rights & Freedoms*.

We repeat from the 2018 Joint Business Community submission on this point, as follows:

> *These schemes violate the Code principle that employees and the parties be given a direct voice in the terms and conditions which will govern employment. Only in this way will they be able to ensure their employment relations and collective agreements reflect the needs and circumstances of their individual businesses. This is currently reflected in the 1992-3 ("cooperative participation") and 2002 (fostering "the employment of workers in economically viable businesses") reforms in the Code. These directions should not be undermined.*
>
> *This is particularly imperative for small and medium-sized businesses. They are the engine of economic growth and job creation in our economy. It is imperative that they should not be over regulated. Their success is needed to provide opportunities for people to support their families and build their communities.*
>
> *Legislated sectoral bargaining removes the ability of employees and their employers to directly address the individual needs and circumstances of their businesses. It thereby inhibits their ability to succeed. It does so by ignoring and negating the key insights in the 1992-93*

and 2002 reforms. Legislated sectoral bargaining would be a step back in time, not forward. It is noteworthy that the previous attempt at forced sectoral bargaining in Part 4.1 of the Code was a failure and the sectoralism which remains in the CLR-Building Trades situation is still replete with difficulties and declining market share despite multiple efforts to rescue it.

The parties themselves are the best monitors of their relations. If they feel their best chance for success is some form of sectoral arrangement, they can voluntarily agree to and arrange that. The reality is that, particularly in the private sector, they do not.

Further, if it is felt that certain publicly funded services have problematic labour relations, the answer is not a one-size-fits-all amendment to the Code affecting all parties, including the critically-important private sector. Instead, the proper response would be for government to identify those specific problematic situations and address them through the mandate and funding of the applicable commercial contracts. That would surgically, as well as transparently, address the issues without causing harm beyond the specific circumstances.

Accordingly, improper attempts to dictate employee choice or the parties' labour relations through either project labour agreements or legislated sectoral bargaining should be rejected.

It is important to note that labour relations has evolved in important ways – workers want more flexibility and more choice and employers are structuring their businesses to be more flexible and to be able to respond more rapidly to changes in technology that are driving changes in customer needs and desires.[19]

As noted by the Panel in its 2018 Report, British Columbia would be an outlier in North America, should it proceed down the path of sectoral certification. The imposed combination of competing employers with different bargaining histories, financial positions, customers, and economic circumstances into a single bargaining unit would be both unworkable and potentially extremely harmful to at least some of those businesses. The Panel expressly recognized these concerns in the 2018 Report and concluded that there was "insufficient information and analysis" upon which to make any recommendations. The 2018 Report stated that this matter should be examined in depth, perhaps by a single-issue commission.[20] Such an analysis has not been done, and this Panel is left in the same position today as it was in 2018.

The 2018 Panel came to the same conclusion with respect to sectoral bargaining. It recognized that there was insufficient information to support the consideration of sectoral bargaining, and it did not view itself as the appropriate forum to address the issue. Rather, it recommended that this topic be examined by Section 80 industry councils and, if appropriate, an industrial inquiry commission. Once again, this has not been done, and we submit that there is no basis for this Panel to reach any other conclusion.

The concerns recognized by the Panel in 2018 are equally applicable today. We maintain, as we did in 2018, that there is no basis upon which to engage in the inquiries suggested by the 2018 Report, with the consequent uncertainty that this surely would introduce into the labour relations environment.[21] However, at the very least, nothing has occurred since 2018 to suggest that the current Panel should

[19] March 20, 2018, Joint Submission, p.6-7
[20] 2018 Report, p. 17
[21] November 30, 2018, Joint Submission, p. 8 & 10

abandon the 2018 conclusions and now embark on a consideration of sectoral bargaining and certification.

ii. Secondary Picketing

We also submit that this Panel should continue to resist any suggestion that it consider upsetting the long-standing and delicate balance between the replacement worker provisions in the *Code* and the restriction on picketing other than at an employee's place of work.

As noted in 2018 in the Joint Business Community submission,

> *…the restriction on replacement workers in section 68 does provide a fair counter- balance to the restrictions on picketing in Part V of the Code. In that regard, you may hear from the union community that they feel the picketing provisions of the Code are too restrictive. They are restrictive, but the restrictions were brought about piece-by-piece as a result of hard-earned experience in which the workplaces and workforces of BC were unduly harmed under previous picketing provisions. The classic example of this is from the forest industry. Previous picketing provisions allowed a striking union to picket the entire operations of the employer. For the integrated forest companies, which dominated both the industry and the economy of the province at the time, this meant that striking sawmill workers could also picket the non-struck pulp mills, and striking pulp workers could picket the non-struck sawmills. This proved harmful not just to the employers but also to the non-striking workers and the economy of the province itself. Restricting picketing to sites where the striking employees actually worked was necessary.*
>
> *The current picketing provisions in the Code are the very sort of legislated scheme expressly allowed by the Supreme Court of Canada in Pepsi. Further, in the BC Code they are uniquely balanced by the most restrictive replacement worker provision in Canada, if not in all Wagner Act labour codes. To be fair and balanced, any amendment of the Code's current picketing provisions would also require the removal of the replacement worker provision.*[22]

In the 2018 Report, the Panel agreed that the appropriate balance had been struck by these *Code* provisions, and explained its position as follows:

> *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*

[22] March 20, 2018, Joint Submission, p. 10

picketing and use of replacement workers during a labour dispute have worked well and should be maintained.[23]

We believe this conclusion remains as correct now as it was in 2018, and that nothing has occurred in the meantime to indicate that this balance should now be upset in the manner that in the past has been proposed by some unions.

*****

ICBA appreciates the opportunity to share the views of our member companies and affiliated industry organizations on the current *Labour Code* review. We look forward to engaging with the Panel and B.C. policymakers on the issues that will be examined during your review.

[23] 2018 Report, p. 26

March 18, 2024

Via Email: lrcreview@gov.bc.ca

Attention: Labour Relations Code Review Panel

Dear Ms. Bannister, K.C., Mr. Fleming and Ms. Thomson:

RE: 2024 – Labour Relations Code Review

1. Please accept this letter as a joint submission made on behalf of the Interior Forest Labour Relations Association (IFLRA) and the Council on Northern Interior Forest Employment Relations (CONIFER). We write in response to the February 2, 2024 submissions invitation regarding the review of the *Labour Relations Code* (the "*Code*").

2. The IFLRA was formed in 1959 to represent forest companies in the southern interior of BC in collective bargaining with what was then the International Woodworkers of America, now the United Steelworkers Union (USW).

3. There are currently 10 member companies and 15 operating divisions, whose manufacturing employees (approximately 2,100) are represented by USW, Local 1-417 in the Kamloops region, Local 1-423 in the Okanagan region and Local 1-405 in the Kootenays.

4. CONIFER was formed in 1973 to represent forest companies in the northern interior of BC. in collective bargaining with what was then the International Woodworkers of America, now the USW.

5. There are currently 13 member companies and 18 operating divisions, whose manufacturing employees (approximately 2,300) are represented by USW, Local 1-2017.

6. Since 2019, the Provincial Government has made numerous forest policy changes negatively impacting the viability of forestry operations in the Interior.[1] This is on top of declining BC

[1] Appendix 1: BC Council of Forest Industries, slides 2 to 6 and 9

softwood lumber exports[2], declining Annual Allowable Cut and Actual Harvest numbers[3], declining forestry sector employment (roughly 10,000 jobs lost since 2018)[4], and 50 plus announcements of mill closures, curtailments & shift reductions since 2020.[5]

7. The cost of logging in the Interior was also detailed in the IFLRA and CONIFER joint submission to the Industrial Inquiry Commission on Forestry Sector Successorship, dated December 14, 2021.[6]

8. Since 2021, IFLRA members have lost approximately 400 unionized jobs and CONIFER members have lost approximately 200 unionized jobs and two operations.

9. The 2018 Labour Relations Code Panel Recommendations resulted in numerous amendments to the *Code* in 2019 and an additional amendment in 2022. Most of the amendments enhanced the rights and protections of unions. There were no changes that could be viewed as pro-employer. For the most part, the 2019 and 2022 *Code* amendments restored the core elements of the 1992 *Code*, with one major exception.

10. The Section 35 "contract for services" added automatic successorship obligations on employers taking over certain contracts for services. That obligation on the new contract provider did not exist prior and represents a major shift in the established successorship legislation and jurisprudence.

11. As a result, the *Code* "pendulum" has now swung past the 1992 balanced model, too far in favour of unions.

12. The creation of the Section 3 review Panel is not intended to result in continuous, unnecessary so-called "fine-tuning" based on the political party in power. The Section 3 Panel's purpose is an objective review of the *Code*, reserving recommendations to fundamental problems creating significant imbalance to the Section 2 Duties Under the *Code*.

13. The 2018 Panel recommended that Section 2(b) "fosters the employment of workers in economically viable businesses" be retained in the *Code*, concluding, "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*."[7]

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[2] Appendix 1: BC Council of Forest Industries, slide 7
[3] Appendix 1: BC Council of Forest Industries, slide 8
[4] Appendix 1: BC Council of Forest Industries, slide 10
[5] Appendix 1: BC Council of Forest Industries, slide 11
[6] Appendix 2: IFLRA and CONIFER joint submission to the Industrial Inquiry Commission on Forestry Sector Successorship, dated December 14, 2021
[7] Report and Recommendations for Amendments to the Labour Relations Code, August 31, 2018, page 7

14. We respectfully submit that additional changes to the *Code* in favour of unions will amplify the existing imbalance in the *Code*, to the detriment of "economically viable businesses".

15. This is particularly applicable given only five years have passed since the 2018 Panel recommendation and even less time since the major *Code* amendments in 2019 and 2022.

16. We now turn to specific *Code* issues.

17. First, the 2018 Panel recommended an Industrial Inquiry Commission on Forestry Sector Successorship, which resulted in the February 10, 2022 Report and Recommendations. We continue to oppose any "contract for services" successorship in the forestry sector, as set out in our submission dated December 14, 2021, see Appendix 2. This Panel should recommend against modification of the existing successorship provisions of the *Code* to include contract logging.

18. Further, the examples relied on in the February 10, 2022 Report and Recommendations focus on certain areas in Vancouver Island and are not reflective of the reality in the majority of the Province, where this is not an issue. Further, compared to the vulnerable, low wage groups covered by the current Section 35(0.1) "contract for services" definitions, the forestry workers potentially impacted are in a significantly different position.

19. Second, many of the 2018 Panel recommendations and 2019 *Code* amendments were premised on the retention of the secret ballot vote certification process (supported by a majority of the 2018 Labour Relations Code Panel), including but not limited to the following enhanced measures, "…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."[8] The 2018 Panel majority stated that if the enhanced measures were not effective, then there will be a compelling argument for the card check system. Despite those enhanced measures and absence of tangible mischief following, the *Code* was further amended in 2022 to introduce the card check certification process.

20. Accordingly, we submit that the 2022 *Code* amendment be reversed, to remove the card check system, until there is evidence demonstrating the enhanced measures are not effective.

21. If card based certification is to remain in the *Code*, then all of the shortened time frames for certification hearings should be removed so that employers would have a reasonable opportunity to make submissions to the Board with respect to the application.

[8] Report and Recommendations for Amendments to the Labour Relations Code, August 31, 2018, page 12

22. Related, extending the valid period of union membership cards from 90 days to six months, was implicitly connected to retaining a secret ballot vote certification process, and not a card check system. Accordingly, if the card check system is not removed, we submit the valid period of union membership cards should be changed back to 90 days.

23. Third, the 2018 Panel confirmed that:

> 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.[9]

24. We submit that the above "package" and balance not be disrupted by loosening restrictions on secondary picketing.

25. Finally, we are deeply concerned that on March 11, 2024, the BC Government introduced Bill 9 - *Miscellaneous Statutes Amendment Act, 2024*, which includes a change to the definition of a "strike" to permit BC unions to respect picket lines of non-BC unions "…regulated by the laws of Canada or another province who are locked out or on strike".

26. Assuming Bill 9 passes, this is a major change favouring unions, creating significant advantages to non-BC pickets, which the *Code* and Board do not have jurisdictional powers to resolve.

27. Currently, the *Code* applies to BC employees, BC employers and BC unions. The *Code* permits BC unions to strike after meeting the requisite preconditions and picket at certain reasonable locations. The *Code* permits BC unions to respect those lawful BC pickets. The *Code* has common site powers to restrict the picketing of the BC union on strike. The *Code* has **no** authority to regulate strikes or picketing of non-BC unions "…regulated by the laws of Canada or another province…". Specifically, the *Code* does **not** have jurisdiction over a federal union to restrict picketing for common site purposes, meaning a common site BC employer has **no** recourse under the *Code*.

28. This a serious distress for our members, who have operations connected to federal railways and transportation. Those federal unionized employees would have an ability to set up pickets at or near our members worksites, and prevent USW employees from attending work. Moreover, in the case of pickets under the *Canada Labour Code*, there is **no** restriction on where they can go, meaning pickets could impact workplaces completely unconnected to the underling strike or lockout. This is inconsistent with the Section 2(f)

[9] Report and Recommendations for Amendments to the Labour Relations Code, August 31, 2018, page 26

duty, “minimizes the effects of labour disputes on persons who are not involved in those disputes”, by expanding the scope of extra-provincial unions who can now lawfully prevent BC unionized employees from attending work.

29. The timing of Bill 9, while Panel’s review process is underway, suggests the BC Government is not interested in hearing from the labour relations community or the recommendations of this Panel regarding “stable labour relations”.

30. In the event that Bill 9 passes, this Panel is well positioned to detail the above serious concerns and provide a recommendation to reverse the amendment. Doing so will allow the *Code* and Board to fully oversee and address labour disruptions within BC’s jurisdictional scope, and avoid significant labour disruptions caused by non-BC union pickets.

31. Under the current submission process, we are not aware of specific items other interested parties are advocating for. Accordingly, we request an opportunity to provide additional submissions once those are shared with the community, or alternatively, an opportunity to provide a response submission to any recommendations made by this Panel.

Sincerely,

Jeff Roos
President
IFLRA

Mike Bryce
Executive Director
CONIFER

APPENDIX 1

Forestry in B.C. – Policy and Economic Summary

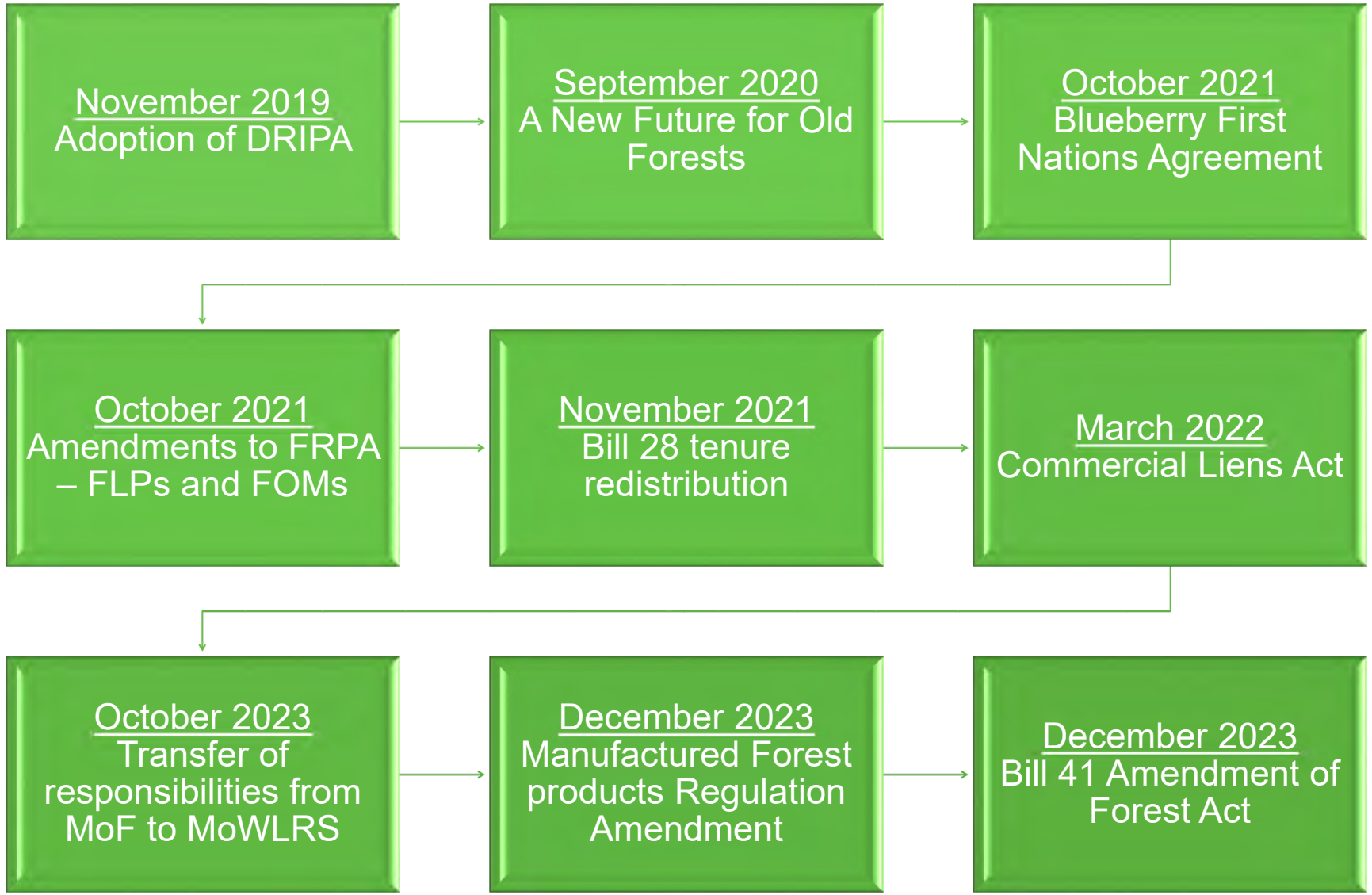
Feb 2024

BC COUNCIL OF FOREST INDUSTRIES

FORESTRY FOR THE PLANET.
FOREST PRODUCTS FOR THE WORLD.

COFI.ORG

Recent Forest Policy Changes



Recent Forest Policy Changes

November 2019
Adoption of DRIPA

- Declaration on the Rights of Indigenous Peoples Act (DRIPA) - Commitment to implementation of legislative reforms and changing of legislation accordingly.

September 2020
A New Future for Old Forests

- A new, holistic approach to old growth management in BC.
- Old Growth Strategic Review – 14 recommendations.
- 196,000 hectare harvesting deferral.
- 2.6 million hectare “voluntary deferral”.

October 2021
Blueberry First Nations Agreement

- Government of BC and Blueberry First Nations agreement to $65 million for land restoration, wildlife stewardship, etc.
- Limits new petroleum/natural gas (PNG) development and protections for old forests
- 650,000 hectares of protection from new PNG and forest activities

Recent Forest Policy Changes

October 2021 Amendments to FRPA – FLPs and FOMs

- Forest Stewardship Plans (FSPs) to be replaced by new Forest Landscape Plans (FLPs).
- Provision of Forest Operations Maps – effective April 1, 2024.
  - Will form the public consultation vehicle for harvesting operations.
  - Will be required to show the approximate location of cutblocks and roads.

November 2021 Bill 28 Tenure Redistribution

- Enables BC government to redistribute existing forest tenures to Indigenous Nations and small operators.
- Intent is to increase First Nation's Tenure share to 20% - currently 10%.

March 2022 Commercial Liens Act

- The Commercial Liens Act (CLA) will replace the Woodworker Liens Act (WLA).
- Curtails the pool of individuals entitled to file for a lien.
- Unclear whether the CLA will cover all log and timber related activities within the WLA.

Recent Forest Policy Changes

October 2023 Transfer of responsibilities from MoF to MoWLRS

- Order in Council 568 transferred natural resource responsibilities from the Minister of Forests (MoF) to Minister of Water, Land, and Resource Stewardship (MoWLRS).
- MoWLRS now has power under 7.1 of Land Act to establish land use objectives considered in FSPs.
- MoWLRS will be responsible for issuance of Crown land leases and Licenses of Occupations needed for forest operations.
- Sections of 27 acts were transferred from the MoF to MoWLRS, including: Water Sustainability Act, Land Act, and Wildlife Act.

December 2023 Manufactured Forest products Regulation Amendment

- Restricts western red cedar and cypress from timber export from the interior
- Follows similar amendment to the Regulation in 2020 that restricts specific exports from the Coast.
- Came into force February 1, 2024.

December 2023 Bill 41 Amendment of Forest Act

- Various amendments to the Forest Act dealing with disposition agreements and corporate changes of control.
- Addresses tenure concentration and public interest considerations when a tenure transfer occurs.
- Provisions of the Forest Act dealing with the disposition of Forest Act agreements also apply to their associated cutting permits

Recent Forest Policy Changes

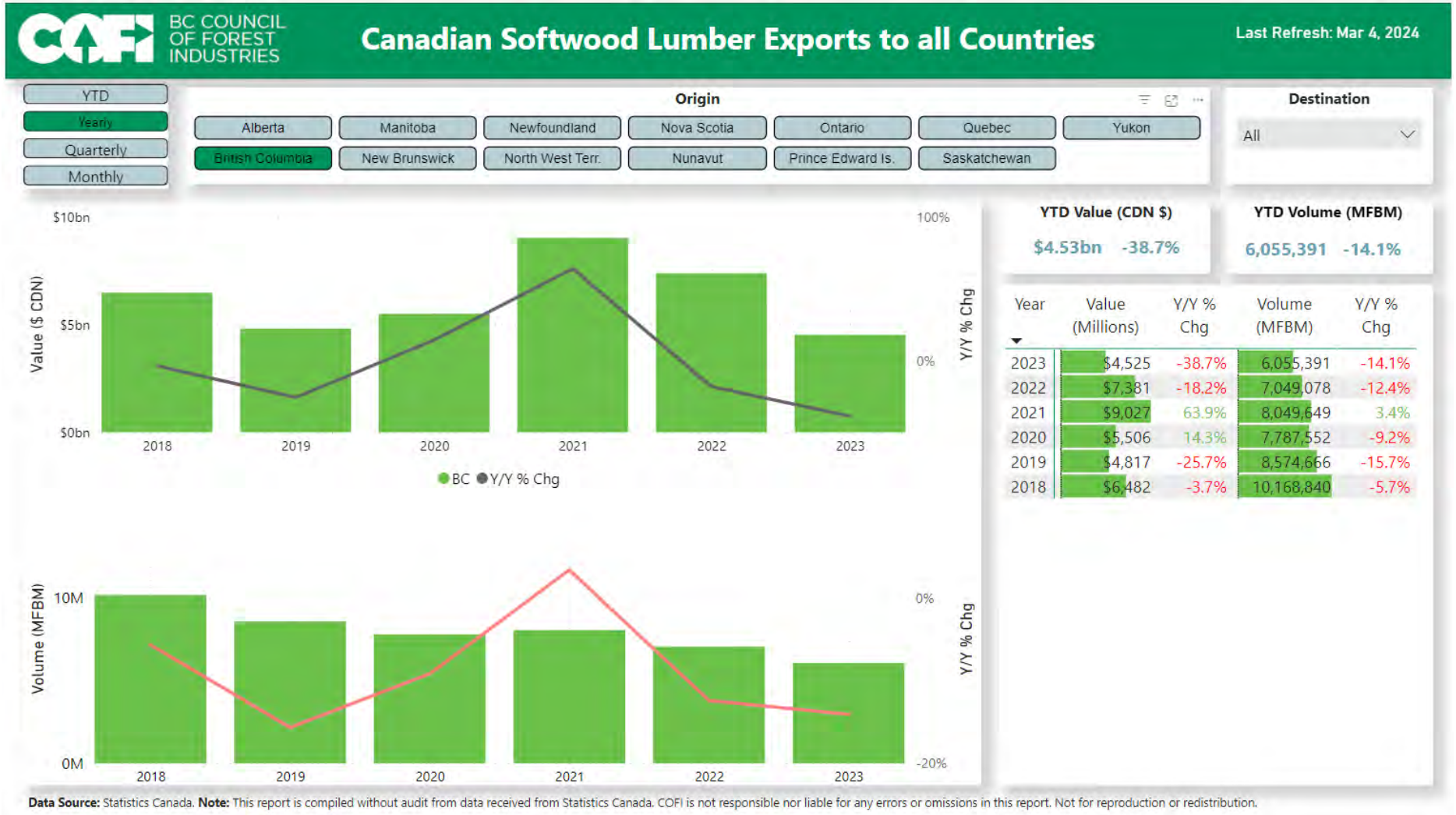
Other Regulatory Changes include amendments to:

- Wildfire Act
- Great Bear Rainforest (Management Act)
- Forest Revenue Audit Regulation
- Forest Accounts Receivable Interest Regulation
- Timber Harvesting Contract and Subcontract: Regulation amended June 2021
- Changes to BCTS Cat 2- new value-added sales category

BC Forest Product Exports

BC softwood lumber exports have declined from 10B FBM to ~6B FBM

Given the reduction in AAC and economic fibre, this will likely continue to trend down

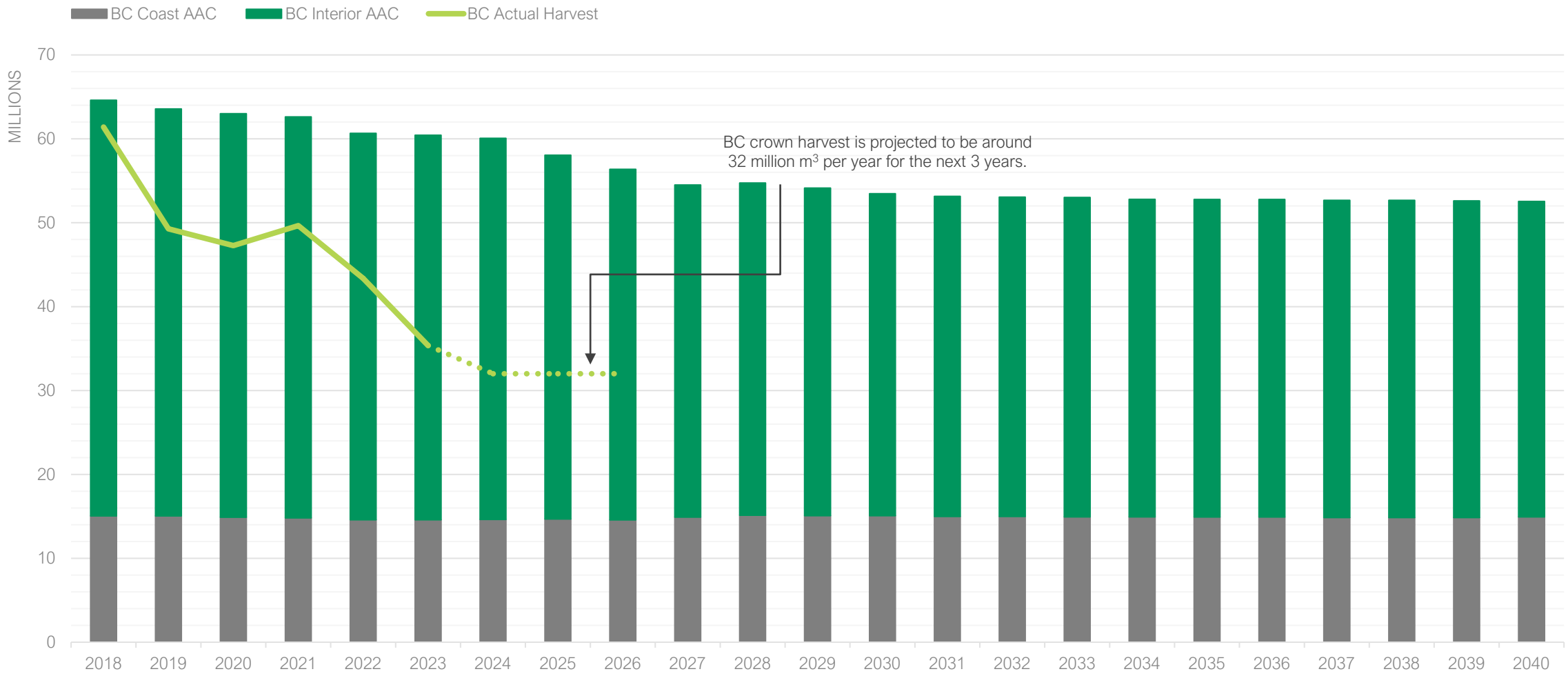


Data Source: Statistics Canada. **Note:** This report is compiled without audit from data received from Statistics Canada. COFI is not responsible nor liable for any errors or omissions in this report. Not for reproduction or redistribution.

BC Interior Coniferous AAC and Actual Harvest

AAC and Harvest continues to decline in the interior, with harvest projected to decline to 32M.

Millions of Cubic Meters (M3)



Source: MoF Forest Inventory and analysis branch, Harvest Billing System

Production Costs

BC is the highest cost jurisdiction amongst its peers

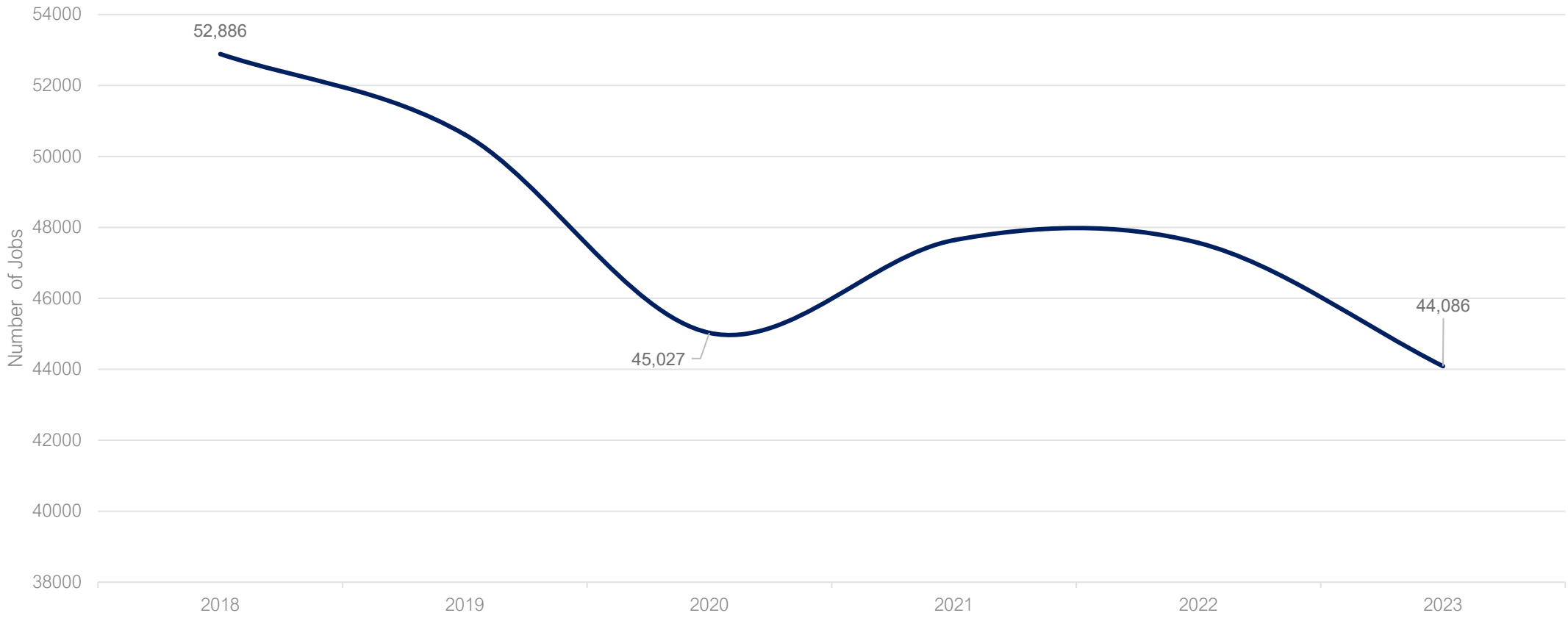
Based on Softwood Lumber Average Variable Costs [USD/MFBM]

Source: Forest Economic Advisors (Feb 2024)

Employment

BC Forest Sector Employment has declined dramatically and continues its downtrend.

Overall employment continues to trend down from ~53k pre-pandemic to 44k most recently



Source - Statistics Canada Table: 14-10-0201-01 from SEPH (Averaged)

Closures, Curtailments & Shift Reductions

BC has been battered with 50+ announcements of closures, curtailments & shift reductions since 2020

Fibre supply, market conditions, transportation and natural disturbances cited as the main causes

Company	Location	Date An	Facilit	Reason(s)	Jobs	Curtailment Status (Permanent Cl	Source of Info
Paper Excellence	Crofton	2020-02-14	Pulp/Paper	Fibre Access	450	Temporary Curtailment	https://vancouversun.com/business/local-business/b-c-pulp-and-paper-mill-faces-30-day-closure-due-to-lack-of-wood/
Carrier	Prince George	2020-03-27	Lumber		120	Temporary Curtailment	https://www.woodbusiness.ca/carrier-lumber-temporarily-closing-big-river-mill-tabor-planer/ (can't find NR)
Atco Wood Products	Fruitvale	Ongoing/interr	Veneer	Market Conditions		Temporary Curtailment	https://www.grandforksgazette.ca/news/west-kootenay-mills-weathering-perfect-storm-in-industry/
Louisiana Pacific	Fort St John	2021-02-16	OSB		190	Temporary Curtailment	https://investor.lpcorp.com/news-releases/news-release-details/lp-building-solutions-reports-fourth-quarter-and-full-year-2020
Canfor	Western Canada	2021-07-20	Lumber	Forest fires		Temporary Curtailment	https://www.canfor.com/docs/default-source/news-2021/nr2021-07-20-canfor-announces-production-curtailment-in-canada.pdf?sfvrsn=298ee091_2
Interfor	Chase, Castlegar, and Grand F	2021-07-29	Lumber	Forest fires		Temporary Curtailment	https://interfor.com/wp-content/uploads/2021/07/2021-07-29-Interfor-Announces-Production-Impacts-in-British-Columbia-Due-to-Log-Supply-Constraints.pdf
Conifex	Mackenzie	2021-08-24	Lumber	Market conditions		Temporary Curtailment	https://conifex.com/wp-content/uploads/2021/08/Conifex-NR-Temporary-Curtailment.pdf
Canfor	BC sawmills (exception of Wyn	2021-08-24	Lumber	Market conditions		20% reduction of production capacity	https://www.canfor.com/investor-relations/investor-news-press-releases/news-detail/2021/08/25/canfor-announces-reduced-operating-schedules-at-bc-sawmills
Paper Excellence Canada	Catalyst Crofton	2021-10-26	Pulp/Paper	Logistics challenges and maintenance of		Temporary curtailment/Temporary Shift Reduc	Email (link to come)
Paper Excellence Canada	Catalyst Tiskwat	2021-12-01	Pulp/Paper	Market conditions	206	Indefinite Curtailment	https://paperexcellence.com/paper-excellence-announces-indefinite-curtailment-of-catalyst-paper-tiskwat-mill-in-powell-river-bc/
Canfor Pulp	Northwood Pulp	2021-12-02	Pulp	Supply Chain Challenges		Temporary curtailment	https://www.canfor.com/docs/default-source/news-2021/nr2021-12-02-canfor-pulp-announces-production-curtailments.pdf?sfvrsn=27d1e091_2
Canfor Pulp	Taylor Pulp	2021-12-02	Pulp	Supply Chain Challenges		Temporary curtailment	https://www.canfor.com/docs/default-source/news-2021/nr2021-12-02-canfor-pulp-announces-production-curtailments.pdf?sfvrsn=27d1e091_2
Western Forest Products	Chemainus Sawmill	2022-02-02	Lumber	Log supply		Temporary curtailment	https://www.vancouverislandfreedaily.com/news/length-of-chemainus-sawmill-production-curtailment-unknown/
Canfor	Plateau Sawmill	2022-02-16	Lumber	Log supply		Permanent curtailment	https://www.newswire.ca/news-releases/canfor-announces-capacity-reduction-at-plateau-sawmill-811544176.html
Canfor Pulp	Taylor Pulp	2022-02-16	Pulp	Transportation challenges		Temporary curtailment	https://www.canfor.com/investor-relations/investor-news-press-releases/news-detail/2022/02/17/canfor-pulp-announces-production-curtailment-at-taylor-pulp
West Fraser	BC Lumber mills	2022-03-01	Lumber	Transportation and inventor	740	Shift reduction (three-day operation schedule)	https://www.castlegarnews.com/news/west-fraser-temporarily-adopts-three-day-work-week-at-b-c-lumber-mills/
Western Forest Products	Chemainus Sawmill	2022-03-22	Lumber	Log supply		Temporary curtailment	https://www.ladysmithchronicle.com/news/another-production-curtailment-at-the-chemainus-sawmill-this-week/
Canfor Pulp	Taylor Pulp	2022-03-29	Pulp	Transportation challenges		Temporary curtailment	https://www.canfor.com/investor-relations/investor-news-press-releases/news-detail/2022/03/29/canfor-pulp-announces-extension-of-production-curtailment-at-taylor-pulp
Sinclar Group	Vanderhoof/Fort St. James/Pr	2022-04-19	Lumber	Supply Chain Challenges		Temporary curtailment	https://sinclar.com/wp-content/uploads/2022/04/SGFP-Press-Release-14-04-22.pdf
West Fraser	Fraser Lake/Williams Lake/Que	2022-08-09	Lumber	Access to timber and transp	147	Permanent curtailment	https://www.westfraser.com/sites/default/files/August%209%2C%202022%20News%20Release%20regarding%20BC%20Operating%20Strategy.pdf
Conifex	Mackenzie	2022-08-22	Lumber	Supply Chain Challenges		Temporary curtailment	Email
Canfor	BC Lumber mills	2022-09-19	Lumber	Market Conditions		Temporary curtailment	https://www.canfor.com/docs/default-source/news-2022/nr2022-09-19_canfor-reducing-production-capacity-in-british-columbia-through-end-of-2022.pdf?sfvrsn=b69ce191_2
Paper Excellence Canada	Crofton	2022-10-06	Pulp/Paper	High cost and Market Condi	150	Temporary curtailment	https://biv.com/article/2022/10/crofton-paper-mill-be-indefinitely-curtailed
Conifex	Mackenzie	2022-10-10	Lumber	High Cost & Market Conditions		Temporary curtailment	https://www.nipimpressions.com/conifex-timber-temporarily-curtails-production-at-mackenzie-sawmill-in-british-columbia-cms-14417
Canfor	Prince George (Intercontinenta	2022-10-17	Pulp/Paper	Fibre shortage		Extension of Temporary Curtailment	https://biv.com/article/2022/10/canfor-extends-prince-george-pulp-mill-curtailment
Interfor	Across NA Operations	2022-10-20	Lumber	Market Conditions		Temporary curtailment	https://interfor.com/wp-content/uploads/2022/10/Interfor-Announces-Temporary-Production-Curtailments-in-Q422.pdf
Western Forest Products	Port Alberni Sawmill	2022-10-15	Lumber	Market Conditions & Log SU	90	Permanent closure	https://www.cheknews.ca/operations-temporarily-curtailed-at-port-alberni-sawmill-impacting-90-employees-1110867/
Western Forest Products	Across BC Operations	2022-11-30	Lumber	Market Conditions & Log SUpply		Temporary Curtailment	https://www.westernforest.com/wp-content/uploads/2017/10/NR-2022-11-30-Temp-Production-Curtailment.pdf
Canfor	Across BC and AB operations	2022-12-05	Lumber	Market conditions		Temporary Curtailment	https://www.canfor.com/docs/default-source/news-2022/2022-12-05-canfor-temporarily-curtailing-canadian-production-capacity-(final).pdf?sfvrsn=7bfe191_2
Canfor	Prince George (Intercontinenta	2022-12-19	Pulp	Fibre shortage due to sawmill curtailmen		Temporary Curtailment	https://www.canfor.com/docs/default-source/news-2022/intercon-curtailment.pdf?sfvrsn=c4b5e191_2
Tolko Industries	Soda Creek/Armstrong	2022-12-28	Lumber	Market Conditions & Log SU	350	Temporary Curtailment	https://tolko.com/tolkocpt_news/jan2023-downtime-sc-armstrong/
Vaagen Fibre	Midway	2022-12-06	Lumber	Market conditions and fibre	86	Indefinite Curtailment	https://www.pentictonwesternnews.com/news/vaagen-fibre-canada-indefinitely-shuts-down-midway-mill-operation/
Skeena Sawmills	Terrace	2022-01-06	Lumber	Market Conditions		Temporary Curtailment	https://www.woodbusiness.ca/skeena-sawmills-shuts-down-log-deliveries-temporarily/
Canfor	Prince George	2023-01-11	Pulp	Reduction of AAC and chall	300	Permanent closure	Email (link to come)
Interfor	Outside of Interfor's US South	2023-01-11	Lumber	Market Conditions & Log SUpply		Temporary curtailment	https://interfor.com/wp-content/uploads/2023/01/Interfor-Announces-Temporary-Production-Curtailments-in-Q123.pdf
Mercer International	Castlegar	2023-01-18	Pulp/Paper	Lack of Residual Fibre for Pulp		Temporary Curtailment	https://www.pulpandpapercanada.com/mercer-international-to-curtail-celgar-mill-in-b-c/
Sinclar Group	PG, Vanderhoof, Fort St. Jame	2023-01-23	Lumber	Market Conditions & Log Supply		Temporary curtailment	Email
Canfor	Chetwynd	2023-01-25	Lumber & pe	Market Conditions & Log SU	157	Permanent Closure	https://www.canfor.com/investor-relations/investor-news-press-releases/news-detail/2023/01/26/canfor-restructuring-b.c.-operations-to-create-a-more-sustainable-footprint
Mercer/West Fraser	Quesnel	2023-02-07	Pulp/Paper	Lack of fibre		Temporoary curtailment	https://mercerint.com/news/2023/mercer-international-inc-announces-downtime-at-its-cariboo-mill-for-eight-weeks/
Conifex	Mackenzie	2023-02-22	Lumber	Unsustainable inventory levels due to rai		Temporary curtailment	https://www.woodbusiness.ca/conifex-temporarily-shuts-mackenzie-sawmill-in-b-c/
Skeena Sawmills	Terrace	2023-02-06	Lumber + Bi	high operating costs and fibr	170	Temporary curtailment	https://www.terracestandard.com/news/skeena-sawmills-in-terrace-announces-temporary-closure/
Sinclar Group	Prince George, Fort St. James	2023-05-01	Lumber	High cost of fibre, poor market conditior		Temporary curtailment	https://www.myprincegeorgenow.com/177171/news/sinclar-curtailments-another-tough-pill-for-northern-lumber-industry-to-swallow/
Tolko Industries	Vernon	2023-05-15	Lumber	Significantly high log costs ir	50	Temporary curtailment	https://tolko.com/tolkocpt_news/lakeview-downtime-may-2023/
Conifex	Mackenzie	2023-05-19	Lumber	Low water levels in Williston Reservoir, r		Temporary curtailment	https://ckpgtoday.ca/2023/05/31/conifex-announces-mackenzie-lumber-production-will-take-unscheduled-downtime/
Brink (Pleasant Valley Remanufacturing)	Houston	2023-05-29	Lumber	Canfor, the provider of the rough inv	75 Direct +	Temporary curtailment	https://getfea.com/mill-capacity-changes/brinkman-forest-products-to-temporarily-close-pleasant-valley-remanufacturing
Paper Excellence Canada	Crofton	2023-05-30	Pulp/Paper	Global demand for paper has	100	Curtailment	https://www.timescolonist.com/business/crofton-mill-to-be-idled-for-30-days-port-alberni-for-two-weeks-7069801
Paper Excellence Canada	Port Alberni	2023-05-30	Pulp/Paper	Global demand for paper has	174	Curtailment	https://www.timescolonist.com/business/crofton-mill-to-be-idled-for-30-days-port-alberni-for-two-weeks-7069801
Western Forest Products	Across BC Operations	2023-06-12	Lumber	Weak Market Conditions		Temporary curtailment	https://financialpost.com/globe-newswire/western-forest-products-inc-announces-temporary-production-curtailments-in-british-columbia-2
Sinclar Group	Vanderhoof/Nechako	2023-08-03	Lumber	Lack of economic fibre		Permanent Shift Reduction	https://pgdailynews.ca/index.php/2023/08/03/sinclar-group-forest-products-reducing-operations-at-nechako-lumber-in-vanderhoof/
West Fraser	Fraser Lake, BC	2024-01-22	Lumber	Lack of economic fibre	175	Permanent closure	https://getfea.com/mill-capacity-changes/west-fraser-timber-co-ltd-announces-permanent-closing-of-fraser-lake-b-c-sawmill
Paper Excellence Canada	Crofton	2024-01-25	Paper	Markets, lack of domestic fi	75	Indefinite curtailment	https://www.paperadvance.com/news/industry-news/paper-excellence-canada-to-indefinitely-curtail-paper-operations-at-catalyst-crofton-mill.html
Dunkley	Prince George, BC	2024-02-02	Lumber	Unknown		Shift Reduction (one shift only)	Hamir Patel - Trade sources also reported that, in a rare move, Dunkley Lumber has reportedly only been running one shift at its Prince George, BC sawmill (~485 mmfbm/yr) since Monday, tem
Tolko Industries	Williams Lake (Lakeview Mills)	2024-02-05	Lumber	Cost of operations in BC an	60	Temporary layoff reducing from 2 shifts to one	https://www.pentictonwesternnews.com/news/shift-idled-at-williams-lake-mill-as-rough-run-continues-for-bc-forestry-7313586
Interfor	BC Operations	2024-02-16	Lumber	Weak market condition, low log inventor		Indefinite Curtailment	https://getfea.com/mill-capacity-changes/interfor-announces-indefinite-curtailment-at-its-pilomath-or-sawmill-and-reduced-production-at-bc-operations

APPENDIX 2

December 14, 2021

Via Email

Industrial Inquiry Commission – Forest Industry Successorship
Suite 300, 1275 West 6th Avenue
Vancouver, BC V6H 1A6

Attention: Vince Ready and Amanda Rogers, Commissioners

Dear Mr. Ready and Ms. Rogers:

RE: Industrial Inquiry Commission – Forestry Sector Successorship

Please accept this letter as a joint submission made on behalf of the Interior Forest Labour Relations Association (IFLRA) and the Council on Northern Interior Forest Employment Relations (CONIFER).

The IFLRA was formed in 1959 to represent forest companies in the southern interior of BC in collective bargaining with what was then the International Woodworkers of America, now the United Steelworkers Union.

There are currently 10 member companies and 15 operating divisions, whose manufacturing employees (2,500 plus) are represented by USW, Local 1-417 in the Kamloops region, Local 1-423 in the Okanagan region and Local 1-405 in the Kootenays.

CONIFER was formed in 1973 to represent forest companies in the northern interior of B.C. in collective bargaining with what was then the International Woodworkers of America, now the United Steelworkers Union.

There are currently 13 member companies and 20 operating divisions. Whose manufacturing employees (2500 plus) are represented by USW, Local 1-2017.

BACKGROUND

The Cost of Logging in the Interior

The economy of the Interior is heavily dependant on the forest industry.

In the Interior, forestry is particularly significant, generating one in five jobs in these regions alone: Cariboo (22%), Northeast (20%), and North Coast & Nechako (19%). In the Thompson/Okanagan forestry supports 20,000 jobs, more than agriculture and associated manufacturing and, in the Kootenays, forestry generates 1 in 10 local jobs. Importantly, forestry also has the highest Indigenous employment of any other resource sector in B.C., and partnerships with Indigenous communities, contractors, and businesses continue to grow[1].

However, there are headwinds for the Interior forest sector due to the shortage of fibre supply. The industry made significant investments to harvest and manufacture "beetle kill" wood before the damage made it unmerchantable. But now, with most of that wood harvested, the industry faces a dwindling supply of logs, exacerbated by forest fires and other natural disasters. The southern interior has been particularly affected[2]:

> **Table 1** depicts regional AACs in 5-year increments and their near-term projected levels. In the mid-2000s, BC's Chief Forester implemented AAC uplifts to address the need to salvage trees on beetle-impacted lands. The Interior AAC peaked in 2007 at just over 68 million cubic meters. As the amount of salvageable timber waned, the AACs were reset at or below pre-uplift levels. By 2025, the Ministry projects the cut will be reduced by a further 10 million cubic meters, assuming no change in the methodology by which AACs are determined.

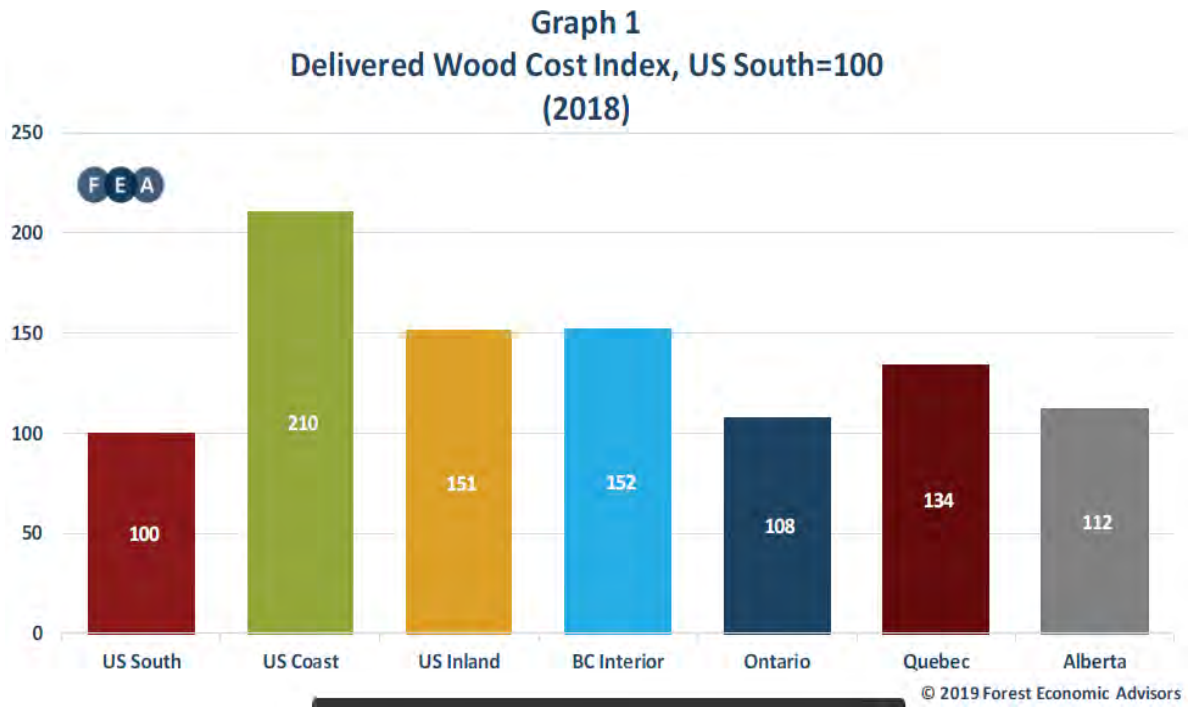
[1] Submission by the B.C. Council of Forest Industries to the Interior Forest Sector Renewal Engagement Process October 11, 2019 [Tab 1]
[2] British Columbia Interior Forest Sector Competitiveness Study, August 2019, Forest Economic Advisors [Tab 2]

	2000	2005	2010	2015	2020
TSA					
North	25.6	32.7	33.0	30.7	26.5
South	19.5	23.4	27.9	23.5	19.2
Total Int	45.1	56.1	60.9	54.2	45.8
TFL					
North	2.2	2.8	3.0	2.0	2.7
South	3.0	2.9	3.5	2.6	2.1
Total Int	5.2	5.7	6.5	4.7	4.8
TOTAL	**50.4**	**61.8**	**67.4**	**58.9**	**50.5**

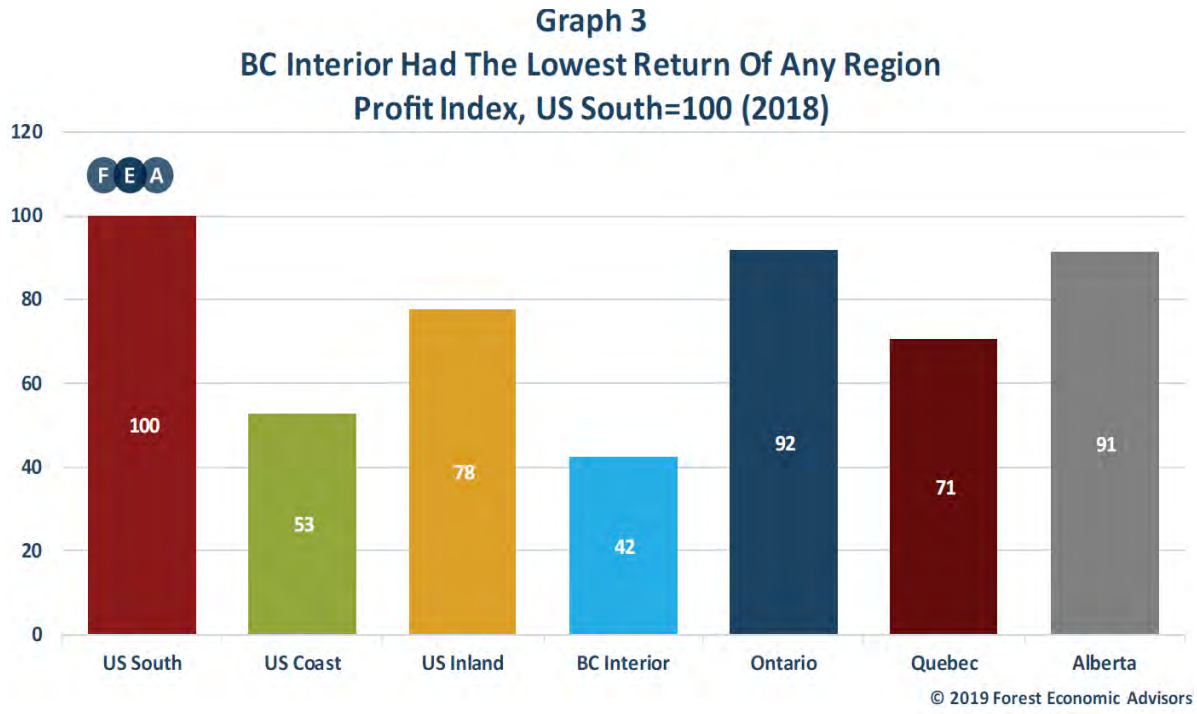
The situation is made worse by the high cost of logging in the Interior as compared with other North American jurisdictions[3]:

> The reductions in timber supply that have occurred have had a direct impact on the competitiveness of the BC Interior lumber industry as delivered wood costs are the largest input cost for a sawmill. Wood costs consist of three parts: 1) the price of the standing timber (stumpage), 2) plus the cost of its harvesting and hauling, 3) less any value recouped from residues.
>
> Based on FEA's latest North American sawmill cost survey for 2018, delivered wood is the highest input cost for all regions. The BC Interior had the second highest delivered wood costs in North America, only the US Coast region was higher (Graph 1)1. In contrast, the US South has the lowest wood costs, followed by Ontario and Alberta. In fact, delivered wood costs in the BC Interior were about 50 per cent higher than the US South.

[3] Ibid, page 1 [Tab 2]



The result is that in 2019, the interior forest sector had the lowest return of any of the comparator jurisdictions[4]



[4] Ibid, page 2 [Tab 2]

The same report offered the following forecast[5]:

> Our forecast out to 2027 shows that margins in the BC Interior are expected to be lower than all major US producing regions, measured by the average sales price to variable cost ratio (Graph 4). This holds both with and without duties on Canadian lumber shipments. If the duties remain in place, the US South is expected to have an average price to variable cost ratio that is nearly 40 per cent higher than the BC Interior on average over the forecast horizon.
>
> This is a huge change from the situation of the past two decades when the BC Interior was one of the lowest cost regions in North America. This rapid migration up the industry cost curve can be attributed primarily to escalating delivered wood costs. A secondary factor has been the additional regulatory and environmental costs, including carbon taxes.
>
> BC mills also face political and forest policy uncertainty. There are significant uncertainties with respect to First Nations "Rights and Title", caribou protected areas, and "public interest" policies surrounding timber tenures. These uncertainties affect investor confidence, having a stifling effect on the injection of new capital within the BC forest sector.
>
> Given potentially low returns and heightened risks, in the absence of change we expect lumber companies will deploy capital to regions outside of BC. Under this scenario, ripple effects throughout the broader provincial forest sector are likely to occur as the interior lumber industry serves as the primary impetus for harvesting and provides key inputs to other parts of the domestic supply chain including pulp mills, pellet plants and secondary manufacturers.

Logging Contractors in the Interior

Almost all of the logging contractors in the Interior are non-union, and it has been that way as long as anyone can remember.

The existing contractors have been in the industry for a long time. They generally work for the same licensees in their geographic area. The Logging contractors have longstanding employment relationships with their employees and, like logging contractors throughout B.C., have invested significantly in equipment to perform their work. Many of the logging contractors hold replaceable contracts under the *Timber Harvesting Contractor and Subcontractor Regulation* B.C. Reg. 149/2021, which gives them ongoing rights.

[5] Ibid, page 3 [Tab 2]

By way of example, Lakeland Mills in Prince George has had a contractual relationship with its logging contractors for up to 30 years. Babine Forest Products in Burns Lake has four replaceable (Bill 13) Logging/hauling contractors who have worked with Babine for 15 to 45 years.

Weyerhaeuser in Princeton BC has 6 core logging contractors all of whom are stump to dump and all of whom hold replaceable contracts. Some of these contractors have been in place for 40 years. One of the contractors is owned and operated by First Nations.

These long-term contractor relationships exist generally throughout the Interior forest industry.

SUBMISSION TO THE COMMISSION

There are no contracting and re-tendering practices in the forest sector in the B.C. Interior that would cause the Commission to make any recommendations to change the successorship provision in the *Labour Relations Code*.

The contractor relationships in the interior have a history of stability. The contractors' employees are with few exceptions non-union, presumably choosing to be so.

If successorship in the forest sector was changed to follow cutting rights, these longstanding relationships would be changed dramatically. If one contractor became unionized, then any transfer of cutting rights to another contractor would lead to that contractor becoming unionized, and so on and so on.

Not only would the second contractor inherit the first contractor's collective agreement, it would also inherit the first contractor's employees, which would mean the displacement of some of its own employees (through seniority integration). Longstanding employment of these employees, in the communities in which they work would be terminated.

The Commission should also consider what this means from a union organizing perspective. Rather than seeing if employees want to be unionized based on circumstances existing with their employer, the Union would simply tell the employee they should unionize so they can follow their jobs to a new contractor if their existing employer loses their contract. The threat of job loss to convince employees to join a union is an unfair labour practice.

Successorship already applies where a unionized logging contractor sells its business to another. There is no reason to apply union certification, collective agreements and union employees to tenure or cutting right transfers.

The other point we wish to make is that putting restrictions on contractors through the imposition of some other contractor's collective agreement, would likely have a negative effect

on the cost of logging – not through the wage and benefit costs which are set by the market for labour in any event, but through restrictive work practices. As the economic analysis of the interior logging sector shows, the industry needs less not more restrictions, so that it can deliver logs to manufacturers at a competitive price.

If a logging contractor inherited a collective agreement (through timber licence transfers), during the term of its harvesting contract, any cost associated with the collective agreement would have to be absorbed by the logging contractor, with the prospect of making the business unviable. This would have significant implications for our member companies.

Our members are concerned that forcing collective agreements on logging contractors, through tenure transfers and the like, will increase costs and dampen investment in new equipment and new logging techniques.

As COFI stated in October 2019 with reference to the interior forest sector[6]:

> Any changes to provincial policy should address these competitiveness challenges. For renewal to take hold, the policy environment must support secure access to fibre at a reasonable cost, a stable, predictable, efficient regulatory regime, and a business climate that puts B.C. on a level playing field with competing jurisdictions. This will attract the capital that renewal requires to move through the current transition and transform to the industry of the future.

If this Commission were to make any recommendation to apply the successorship sections of the *Code* to any of the circumstances set out in the Terms of Reference, it would definitely further unbalance the playing field between our members and their competitors in other jurisdictions. And would do so for no apparent reason. There is nothing in the logging sector in the B.C. interior that would support the need for such a drastic change.

Sincerely,

Jeff Roos
President
IFLRA

Mike Bryce
Executive Director
CONIFER

[6] Submission by the B.C. Council of Forest Industries to the Interior Forest Sector Renewal Engagement Process October 11, 2019 [Tab 1]

IATSE
www.iatse.net

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA

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THIRTEENTH VICE PRESIDENT

March 22, 2024

VIA EMAIL

lrcreview@gov.bc.ca

LABOUR RELATIONS CODE REVIEW PANEL

Attention: Sandra Banister, K.C., Michael Fleming, Lindsie Thomson

Dear Sirs/Mesdames:

Re: Submission to the Labour Relations Code Review Panel from the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada ("IATSE") makes this submission in response to the February 2, 2024 invitation to the community from the committee of special advisors (the "Panel") appointed to review the British Columbia *Labour Relations Code*[1] (the "Code").

IATSE is supportive of changes to the Code that enhance the rights and lives of workers, and we thank you for your consideration of our submission.

I. Overview

Founded in 1893 when representatives of stagehands working in eleven cities met in New York and pledged to support each other's efforts to establish fair wages and working conditions for their members, IATSE has evolved to embrace the development of new entertainment mediums, crafts expansion, technological innovations, and geographic growth.

Today, IATSE members in BC total over 12,000 (plus more than 5,000 working permittees) who work in all forms of live theatre, motion picture, trade shows and exhibitions, television broadcasting, and concerts as well as art galleries and the equipment and construction shops that support the arts and entertainment industry. Camera people and technicians, stage employees, projectionists, casino employees, studio teachers, as well as people working in wardrobe, lighting, art direction, set design and construction, special effects among other areas of motion picture, film, digital internet, and television production are among our members. Virtually all the behind-the-scenes workers in crafts ranging from motion picture animator to theatre usher are represented by the nine IATSE locals in BC.

[1] *Labour Relations Code*, R.S.B.C. 1996, c.244

According to the 2022 Creative Industries Economic Results assessment (Motion Picture - Creative BC), BC GDP for the Motion Picture sector was $3.3 billion and provided 47, 501 jobs. Of those workers, IATSE Locals 891 and 669 represent 10,845 members and several thousand permittees, representing the largest group of workers in this sector. From the early days, IATSE has actively participated in the development and growth of the film and television production industry in BC and markets British Columbia as a premier film-making destination. Its members are critical to the success of the entertainment industry in this Province.

These submissions are made on behalf of the nine IATSE locals across the arts and entertainment sector: IATSE's motion picture Locals -- 891 and 669 -- are members of the BC Council of Film Unions, the Motion Picture Industry Association of BC, the BC Federation of Labour, and the Canadian Labour Congress. IATSE Locals 118 and 168 are members of the latter two organizations and represent live performing arts and trade show technicians and permittees. Also included are IATSE locals 250 (Interior Stage), 938 (Animation), B778 (art gallery/cultural workers and equipment houses), ADC 659 (Associated Designers of Canada), and 402 (Visual Effects).

These submissions are specifically in relation to:

I. Successor Rights on re-tendering of contracts
II. Enhanced Decertification restrictions
III. Artificial Intelligence

I. Successor Rights on re-tendering of contracts

Section 35 of the Code should be broadened to address and prevent the problem of subverting a collective agreement through contract flipping in all contract services industries, including the arts and entertainment sector.

In 2019, Section 35 of the Code was amended[2] to extend union successorship rights in the building cleaning, security, bus transportation, food services and non-clinical services in the health sector in circumstances of contract re-tendering. This change protects unionized employees' security and terms of employment by mandating that the new contractor will be bound by the collective agreement of the predecessor contractor and/or by all proceedings under the Code. The IATSE thanks the 2018 Panel for recognizing the importance of expanding worker protections under Section 35, and we continue to advocate for arts and entertainment industry workers to receive these protections as well.

Union membership in the arts and entertainment sector continues to be undermined in BC by the prevalent practice of contract flipping where sub-contractors are utilized. Employees of sub-contractors are at risk of losing collective agreement protections when contracts are retendered. When new contractors are engaged, they have no obligation to re-hire workers, much less maintain their wages and benefits. Because collective agreements are deserted when contracts flip, workers must organize again. This also undercuts unions' ability to negotiate better wages and working conditions over time.

As acknowledged by the Special Advisors in the *Changing Workplaces Review: An Agenda for Workplace Rights*[3] in Ontario the arts, entertainment, and recreation industry has one of the

[2] *Labour Relations Code Amendment Act*, 2019.
[3] C. Michael Mitchell and John C. Murray, Special Advisors, *Changing Workplaces Review: An Agenda for Workplace Rights – Final Report*, May 2017 ("*Ontario Final Report*"), page 49.

highest concentrations of vulnerable workers engaged in non-standard employment. The Special Advisors identified some of the issues with re-tendering of contracts in their Final Report:

> We do conclude, however, that in industries mostly populated by vulnerable and largely unskilled workers, the constant re-tendering of contracts is, in many cases, not a mechanism aimed at achieving efficiencies through acquiring greater expertise or different methods of production but, rather, a mechanism to reduce costs by substituting a cheaper, non-union contractor for a unionized one. **The social cost and impact of this "efficiency" is borne by those least able to bear it, namely, the vulnerable and the precarious employees in that industry. If a union in collective bargaining negotiates improvements in the working conditions for the unskilled and vulnerable people it represents, these gains are negated by re-tendering. The effect of constant re-tendering is not only to keep compensation low but also to eliminate improvements achieved through collective bargaining.**
>
> This situation of contracting out and re-tendering is perhaps one of the best examples of a fissured workplace, creating competition among suppliers of low-skilled services on a constant basis to keep wages and benefits as low as possible. **Clearly, this is a major contributor to the continued presence of vulnerable workers in precarious work in some sectors. Stability and advancement through meaningful collective bargaining is not sustainable when the workers are unskilled and the lead employer can reduce costs, keeping them at rock-bottom through an endless series of re-tendering.** [Emphasis added].

Obligating successor employers in the contract services sector, including the arts and entertainment industry, to uphold collective terms and conditions of employment and bargaining rights through the extension of the Code's successorship provisions would effectively thwart tactics used by employers to undermine bargaining rights through contract flipping. Such measures would have assisted IATSE members working at Rogers Arena when the arena tendered a commercial service agreement shortly after the union obtained certification.

The protections afforded by Section 35 of the *Code* should not be restricted to the services listed in subsection 35(.01) of the Code, but rather should protect all workers from the harms that were acknowledged by the 2018 LRC Review Panel[4].

In the 2018 LRC Review Panel report[5], the panel used strong language to describe the disturbing consequences of the gap in the legislative framework at that time. The 2018 Panel's observations included:

> "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."
>
> "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

[4] LRC Review Panel, Michael Fleming, Sandra Banister Q.C., Barry Dong, appointed on February 06, 2018, to review the B.C. Labour Relations Code and provide recommendations for any amendments or updates.

[5] A Report to the Honourable Harry Bains, Minister of Labour: Recommendations for Amendments to the Labour Relations Code, Submitted August 31, 2018.

> 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 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*." [6]

However, the 2018 Panel noted that "Employer organizations encouraged the Panel to take a conservative, measured, approach and cautioned that any extension of successorship should only be done "surgically"."[7] This proved successful, and the services protected from contract flipping were restricted to those found in subsection 35 (.01). As stated above, contract re-tendering has resulted in employment precarity; which applies to all workers. Workers take risks to seek certification and work hard to reach a collective agreement. It is unclear why some workers achieved this protection, while vulnerable workers in the arts and entertainment sector did not.

Subsection 35(.01) arbitrarily excludes many workers who are affected by the harms the 2018 Panel outlines and deserve the same protection. The entertainment industry provides some examples: IATSE members faced the same harms the 2018 Panel outlined when, after certification, contracts were re-tendered for Rogers Arena and for the Space Buddies film.

IATSE members working within the entertainment industry face unique workplace challenges which the current legislative framework in British Columbia is ill-equipped to address. As acknowledged by the Special Advisors recently in the *Changing Workplaces Review: An Agenda for Workplace Rights*[8] in Ontario the arts, entertainment, and recreation industry has one of the highest concentrations of vulnerable workers engaged in non-standard employment.

The experience in these sectors has been that employees lose their jobs, their security of employment, their union representation, and their collective agreement wages and benefits when their employer's commercial contract is re-tendered to another contractor. In many cases these same employees are hired by the new contractor to perform the same work but with no recognition of their past service or seniority, with lower wages and benefits, and without their previously chosen union representation and collective agreement. In some circumstances, this has occurred repeatedly as service contracts are re-tendered frequently, with great hardship to the employees.

II. Enhanced Decertification restrictions

Significant changes in the economy and in the workplace (eg. advances in technology, globalization, rise in the prominence of non-standard employment relationships, greater workforce diversity, among others) require labour laws in British Columbia to evolve and ensure that BC workers have the same rights and protections of other Canadian workers.

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[6] 2018 LRC Review Panel report, page 19.
[7] 2018 LRC Review Panel report, page 20.
[8] C. Michael Mitchell and John C. Murray, Special Advisors, *Changing Workplaces Review: An Agenda for Workplace Rights – Final Report*, May 2017 ("*Ontario Final Report*"), page 49.

The protections afforded by section 33 of the Code should be expanded by narrowing the window for decertification applications, with provisions similar to those found in Ontario's Labour Relations Act. Specifically, as in the Ontario legislation, subsection 33 (3) should be enhanced by further restricting an application for decertification to the following time periods:

- six (6) months after the commencement of a lawful strike or lockout; and
- during the final three (3) months of a collective agreement (or the three (3) months prior to the third and subsequent anniversaries of the collective agreement if the agreement lasts in excess of three years).

The vulnerabilities and challenges faced by the arts and entertainment sector can be likened to that of gig economy workers, where income is earned outside of a traditional employment relationship. Lead by Minister of Labour, Harry Bains, British Columbia is taking steps to bring fairness and predictability to gig economy jobs and including the above safeguards to Section 33 of the Code would improve the working conditions for the arts and entertainment sector, and for all those workers that form the evolving and expanding landscape of the gig economy.

III. Artificial Intelligence

The International Alliance of Theatrical Stage Employees ("IATSE") requests that the Labour Code Review Panel consider the inclusion of worker protections with regards to the use of Artificial Intelligence ("AI") systems in the workplace in the *British Columbia Labour Relations Code* ("the Code"). AI has significant implications for British Columbia workplaces and will continue to impact all facets of the employment relationship. Legislation to govern its use in the workplace is necessary to mitigate negative impacts which can include job displacement, job losses, loss of income, increases in precarious work and income inequality.

We respectfully submit that the British Columbia Labour Code Review Panel should endorse and recommend protections to mitigate the impacts and risks of AI in the workplace. Without appropriate guard rails, the proliferation of AI in the workplace can be used to eliminate positions, contribute to precarity, and use personal data and work product without consent or contribution for the sole purpose of profit. Where appropriate frameworks are in place, AI presents a great opportunity to complement existing roles. British Columbia has the opportunity to become a provincial leader with respect to enacting legal protections for workers facing a historic shift in working conditions as a result of AI.

<u>Issues Background</u>

IATSE is the largest trade union representing workers in Canada's entertainment industry. Founded in 1893 (1898 in Canada), the IATSE has over 170,000 members - 34,000 of whom are in Canada. Their membership is comprised of virtually all the behind-the-scenes workers necessary to the functioning of the entertainment industry - across film & television, animation, live entertainment, conventions, and trade shows. IATSE represents a wide range of creators and highly skilled technicians, including cinematographers, SPFX artists, animators, costume designers, props masters, hair stylists, makeup artists, aerial riggers, scenic carpenters, and many more. On a film set, most of the people working will be IATSE members. In a word, they are the crew.

IATSE members are directly impacted by the use of AI systems in the entertainment industry. The unchecked use of AI systems without legal protections affects both current and future work

opportunities and the ability of human workers to protect their livelihoods. Absent legal safeguards and minimum floors of rights for workers, AI can be used as a tool to consume creative works for profit and replace many human workers.

AI systems are already in use in the entertainment industry which has been grappling with rapid advances in technology. Realistic replications have been made of creative works using AI including voices, faces, performances, and sounds. The rapid advances of this technology have led entertainment industry employers in the industry to consider how AI systems may be exploited profit.

Addressing this issue no longer calls for a proactive approach as the technology here now and is already in use. The British Columbia government must act now to establish basic protections for workers. In both the Writers Guild of America (WGA) and the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) labour disputes in 2023, the use of AI was a key issue. If policy makers fail to establish clear guardrails immediately, creative professionals and other workers will suffer from this missed opportunity.

Where used responsibly, AI systems may be used as a tool to assist human beings in their creation of creative works. However, without a human first approach, and legal protections in place, AI will disrupt employment opportunities, employment contacts and collective bargaining agreements in the province of British Columbia. A legislative framework is necessary to create checks and balances on the use of AI and shift the balance of power away from solely profit driven goals. Without a legislative framework we can expect negative impacts including job losses, violations of privacy rights, discrimination, income inequality and the loss of the role of humans in creative endeavours.

The Code is the statute in British Columbia which governs employment relationships in the province and is the appropriate legislation to house a legal framework that governs the use of AI in British Columbia workplaces.

Proposed Amendments to the Code

In reviewing proposed changes to the Code, we ask that the Review Panel establish and consider guiding principles that must be at the forefront of any workplace AI regulations. We submit that those guiding principles must include:

1. The use of AI must be transparent
2. Express consent must be mandatory
3. Human workers must be protected

1. Transparency

The Code ought to be amended to contain requirements that the use of AI systems in the workplace be completely transparent to both workers and their bargaining agents. Below are proposals which would improve the transparency of the use of AI systems in workplaces in British Columbia.

a) Duty to Consult with Workers and Trade Unions before Application

The Code should be amended to include a strict duty to consult with impacted workers and their trade unions before the introduction of AI systems in their workplaces. This protection has been included *Artificial Intelligence Act* passed by the European Parliament.[9]

Workers and their trade unions must have an open and clear understanding of the AI systems in use in their workplace before they are implemented. This is integral to workers and their unions being able to proactively engage in discussions to understand the AI uses and to be able to negotiate limitations in an informed way. These discussions may inform collective bargaining and level the playing field by ensuring all parties have full information concerning the uses of AI in the workplace.

The use of AI in the workplace must be transparent. Without this transparency, workers and their trade unions will face practical impossibilities in understanding how their data, personal information and creative work is being used. Creative contributors will face the same practical impossibility in understanding which of their creative works have been consumed for reproduction without contribution. Without a legal framework that provides for transparency, workers and trade unions will be unable to enforce rights even where such rights exist.

b) Plain Language Policy Requirement

Where AI systems are in place, the Code must ensure that employers are required to make written policies available to workers which explain the uses of AI in the workplace. Employers must be required to provide meaningful information to enable workers to understand how the AI systems are used and any interactions they may have with those systems. Knowledge is power in these circumstances and workers need to be provided the tools to understand how the AI systems are used. This knowledge is necessary to enforce rights or limitations and challenge any outcomes. AI systems are generally described in technical language that is difficult to read or understand by individuals who do not work with these systems. Confusing technical language is as useful as providing no information at all. To ethically communicate the uses of AI systems in the workplace, proposed policies should be written in plain language and provided to workers and their bargaining agents before any discussion about the uses of the AI systems in the workplace.

2. Consent

a) Express Consent Must be Obtained

Consent is a fundamental tenant of privacy law in British Columbia and throughout Canada. The Code should be amended to require express consent before worker personal information is used to train AI systems and generate material. Personal information is that of the individual to give, and without express consent requirements personal information and other user generated material can be used for profit to train AI systems and generate materials. Consent is an essential requirement to provide workers rights over the use of their information in the workplace.

Records must be kept and disclosed to permit inspection or investigation of the material that is used to train AI systems and generate material. Without such a requirement, it would be practically

[9] https://www.etuc.org/en/pressrelease/ai-parliament-protects-workers-rights-new-directive-needed https://www.europarl.europa.eu/doceo/document/A-9-2023-0188_EN.html

impossible to challenge or investigate any uses of material. Workers and trade unions would lack the requisite knowledge to assert or enforce rights.

b) No Workplace Monitoring Without Consent

The Review Panel should consider amending the Code to prohibit workplace monitoring without the consent of a worker or trade union. AI is increasingly used for the surveillance and monitoring of employees in the workplace. Surveillance that uses artificial intelligence is now more sophisticated than ever at monitoring employees both inside and outside of the workplace, with little regard to the impacts on workers and their personal information. These systems track locations and movements without any consideration of the nature of the worker or the actual context of the work.

Without a consent requirement, these sophisticated systems may be used unbeknownst to workers or their trade unions. Consent requirements create an important disclosure obligation before they can be put in place.

These systems extract personal data from workers and can monitor movements, keystrokes, facial expressions, and actions both on and offline. The systems can consume time longs, email content, meeting notes, cell phone usage and other personal information to make recommendations about productivity. The human element which reviews the context in which a worker creates a work is completely stripped away and reduced to data. Decision making based solely on this raw data may lead to unfairness and discrimination.

In surveys, those who reported being monitored by their employer were more often to report that they did not feel valued at work, compared to those who were not monitored.[10] Those who do not feel valued at work are more likely to experience poor mental health including stress, anxiety, and irritability.

These employee monitoring systems are used for human resources decisions including discipline and termination. Considering the existing power imbalances in the employer employee relationship, minimum standards legislation must protect these workers from AI surveillance without consent. Without sufficient checks and balances in place, the use of sophisticated AI surveillance will continue to intensify creating negative impacts on workers and their wellbeing.

3. *<u>Human Workers Must Be Protected</u>*

The use of AI in the entertainment industry represents an opportunity to complement existing roles through the availability of additional tools instead of a harmful weapon that will devalue creative work and replace human workers. Where in use, AI systems must be used as a tool which requires human connection and decision making.

a) Duty to Conduct an Impact Assessment

Before AI systems are implemented the Code should mandate an impact assessment that measures risks and impacts to workers. This impact assessment should be provided to workers

[10] https://www.apa.org/news/press/releases/2023/09/artificial-intelligence-poor-mental-health#:~:text=Those%20who%20do%20not%20feel,often%20associated%20with%20workplace%20burnout.

and trade unions before the duty to consult so that all parties have a full understanding of the potential risks and can discuss them in an informed manner.

The assessment should review the safety and reliability of the AI system and list potential harms to workers and the workplace, including potential job changes, or the elimination of positions. The assessment must also review the level of human oversight over any decision making. Decisions made through AI can have serious consequences that require an adequate level of human oversight. It is well documented the algorithmic biases can be built into systems by programmers which can result in discrimination based on protected grounds.[11] The assessment must review the governance structure and the internal roles and responsibilities for oversight of the AI systems.

Further, the impact assessment must consider worker privacy and the use of personal data in the AI systems. Any uses of data including the intention to provide data to any third parties must be outlines. These assessments are important to the ability of a trade union to systematically evaluate the presence of signals of risk indicating that the introduction of the AI system may harm workers and bargaining rights.

b) Inclusion of the Precautionary Principle

In amending the Code to address the use of artificial intelligence in the workplace, the Review Panel should apply the precautionary principle. Where the use of artificial intelligence carries a risk that it may harm workers, it should be prohibited until the employer can prove it will not. A wait and see approach should not be utilized where the stakes are so high. Such a principle is featured directly in legislation related to the protection of workers including health and safety legislation in Ontario which requires employer to actively take every precaution reasonable in the circumstances for the protection of a worker.[12]

c) Successorship Protections

Previous amendments to the Code have sought to strengthen successorship provisions to address the precarity of certain workers and maintain collective bargaining rights. The infiltration of AI systems to replace and perform the work of human workers will exacerbate the proliferation of precarious work. In these circumstances, protecting collective bargaining and collective agreement rights must be of primary importance to the Review Panel.

Successorship protections in the Code should not be limited to specific sectors. With the rise of precarity, all workers should be protected from contract flipping and re-tendering. Contract re-tendering in precarious industries has been known to result in significant erosions of wages, benefits, and job security. While these impacts may have been previously most prevalent in certain sectors such as security services, it can be expected artificial intelligence contribute to worker precarity and increase attempts to re tender and contract flip across industries including in the entertainment industry. Where entertainment industry workers are employed in temporary contracts or for agreements that cover short productions, the risk of contract flipping and retendering is real. This will be exacerbated by the use of artificial intelligence where it encourages a profit driven model that without legal protections may eliminate entire sections of a workforce or

[11] https://www.whitehouse.gov/ostp/ai-bill-of-rights/algorithmic-discrimination-protections-2/#:~:text=Algorithmic%20discrimination%20occurs%20when%20automated,orientation)%2C%20religion%2C%20age%2C

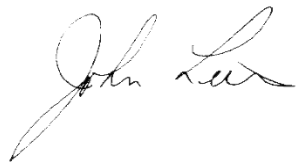
[12] Occupational Health and Safety Act, R.S.O. 1990, c. O.1 s. 25(2)

use their data to train a system that can be operated by new or unskilled workers. As such, the Review Panel should expand successorship protections to all workers.

Conclusions

IATSE appreciates the opportunity to be consulted and looks forward to providing any further information that the Ministry may require. In addition to these written submissions, IATSE is willing to meet with the Review Panel either in person or virtually to further discuss any of these important issues.

Sincerely,



John M. Lewis
International Vice President and Director of Canadian Affairs

cc: Matthew D. Loeb, IATSE International President
Julia Neville/Nancy Hum-Balbosa, IATSE International Representatives
IATSE Local 118 (Stagecraft, BC Mainland)
IATSE Local 168 (Stagecraft, Vancouver Island)
IATSE Local 250 (Stagecraft, BC Interior)
IATSE Local 402 (Visual Effects)
ICG Local 669 (Cinematographers, Western Canada)
IATSE Local 891 (Motion Picture Technicians, BC)
IATSE Local 938 (Animation, BC)
IATSE Local B-778 (Arts & Cultural Workers, BC)
ADC Local 659 (Associated Designers of Canada, BC)

I.A.T.S.E. LOCAL 118

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES LOCAL 118 – VANCOUVER, CANADA

March 22, 2024

Labour Relations Code Review Panelists:

As members of Local 118 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) we work as stagehands and technicians on live theatre, convention and concert productions in the Vancouver area.

Most of our members depend on work on a casual basis as a part of the vulnerable non-standard "gig economy," although we mostly work as employees, not contractors. There are also many in the industry who are working at and supplying some very large venues without the benefit of union jurisdiction.

We were pleased to see successorship rights included in Section 35 of the revised Labour Relations Code five years ago but were very disappointed that the entertainment industry was not included in the grouping of industries where the provisions would apply. We have had experience in contract flipping in the past (Rogers Arena) and continue to be threatened by this anti-union, and anti-fair employment, tactic as we see signs of its growing use in our industry across North America. Without this protection it also means that our colleagues (and many of our own members) working in non-union environments fear that they could face reduced wages, hours and benefits – and even be punished – through contract-flipping should they try to seek union certification.

In August 2021, IATSE and its B.C. Locals wrote to Labour Minister Harry Bains to explain our case for inclusion of our industry under Section 35. As further background, I have attached a copy of this letter along with this submission, to form a part of our full submission to the Review Panel. Attachments referred to in the letter are available upon request.

Our Local also fully endorses the submissions made to you by the B.C. Federation of Labour and IATSE's Canadian office with regard to successorship rights.

We urge you to recommend to the B.C. Government that it expand the successor rights and protection under Section 35 of the Labour Relations Code to other industries, which is especially important in the entertainment sector where contract-flipping can currently be easily used as a means of preventing or removing union representation and reducing employee wages and benefits.

Expansion of successorship rights is also a perfect example of what needs to be done in "providing stable labour relations and supporting the exercise of collective bargaining rights," as stated in Minister Bains' 2022 Mandate Letter.

Thank you for your work.

John Allan
President
IATSE Local 118
Vancouver

IATSE
www.iatse.net

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA

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August 5, 2021

***VIA EMAIL* (LBR.Minister@gov.bc.ca)**

The Honourable Harry Bains
Minister of Labour
Province of British Columbia
Ministry of Labour
PO Box 9206 Stn Prov Govt
Victoria, BC V8W 9T5

Dear Minister Bains:

Re: Designating the Live Event and Screen-Based Media Services as "Prescribed Services" under Section 35 of the BC *Labour Relations Code*

I write on behalf of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada ("IATSE") locals in British Columbia, to advance a request for inclusion of services rendered in the Screen-Based Media, and Live Event sectors as services falling under the definition of "contract for services" in Section 35 of the BC *Labour Relations Code* RSBC 1996, c. 244 (the "*Code*"). Extending the successorship provisions pursuant to Section 159(2)(f) of the *Code* to cover contract flipping in these industries is essential to protecting workers who are otherwise precariously employed in these sectors.

Throughout this submission, the many ways in which the practice of "contract flipping" or "contract re-tendering" has had serious detrimental impacts on employees in the Screen-Based Media and Live Event sectors in BC will be described. The practice of contract flipping occurs when a contract for services is re-tendered and a new employer is awarded the contract. Employees of the former employer are often left without work or are re-hired by the new employer at lower wages. The new employer is not covered by any previous bargaining certification or collective agreement that applied to the previous employer and the employees are thus forced to "start from square one" in any efforts to collectively organize. Moreover, any gains employees made through collective bargaining are lost with the contract flip. It has been proven that the practice of contract flipping has led to stagnation of wages and precarity of workers in many industries.

The Legislature has acknowledged in recent changes to the *Code*, that certain sectors must be protected from this practice.[1] The Screen-Based Media and Live Event sectors have also been disproportionately impacted by the corrosive effects of contract flipping. In these industries, where a contract is re-tendered and substantially similar services continue to be performed, any collective agreement in force should continue to bind the new contractor. Such protection fosters the ability of British Columbians to access stable employment at liveable wages.

[1] *Labour Relations Code Amendment Act* ("Bill 30").

While the sectors covered by this application are diverse, one defining characteristic of the work in these sectors is that it is often casual, short-term and project-based, or what is known colloquially as "gig work". Working conditions in these "gig sectors" are notoriously precarious and uncertain. Moreover, employers often unlawfully mis-classify workers in these sectors as "independent contractors" to avoid obligations under the *Employment Standards Act*[2] and the *Workers Compensation Act*[3]. Workers often must rely on multiple sources of employment to make ends meet. Making the proposed changes to the successorship legislation under the *Code* will contribute to improved working conditions in sectors that have been defined by instability and insecurity for workers.

While the workers in these sectors have always been subject to precarious working conditions, the impacts of COVID-19 have exacerbated existing issues in these sectors and have highlighted the pressing need for regulatory protections. Furthermore, acknowledging the importance of these workers and protecting their rights to unionize will ensure the healthy recovery to BC's arts and entertainment industry as the Province looks to the next chapter of post-pandemic reopening.

Throughout the pandemic the number of layoffs in the Live Event sector, for example, has been unprecedented. Results of the Professional Association of Canadian Theatres "Covid-19 Impact Survey", in which 132 theatre companies across Canada participated, reveal that companies have laid off an average of 10 staff members during the pandemic, with some companies having laid off up to 90% of their staff.[4]

To date, workers in the arts have sustained hundreds of millions of dollars of COVID-related income losses over the last year and a half, with no end in sight. The Live Event sector will be one of the last to recover, and it will not be in 2021. Workers in the arts have suffered disproportionately from the impacts of the pandemic. The success of the post-pandemic arts and entertainment recovery will depend on them. Making the relatively discrete order available to Cabinet under Section 159(2)(f) is essential to ensuring that the recent supports to the arts and entertainment sector improve the lives of those working in that sector.

As there are impending large-scale contracts set to expire within the next six months (with some contract flips anticipated as soon as January 2022), with corresponding losses of bargaining rights to employees in these industries, I respectfully request that this submission be considered on an expedited basis.

IATSE MEMBERSHIP

IATSE is the largest union in the entertainment industry, representing over 155,000 technicians across North America, including 29,000 in Canada. IATSE members work in the screen-based media and live event sectors. In British Columbia, IATSE also represents arts and cultural workers.

IATSE represents over 11,000 members and over 5,500 permittees in BC, in all forms of live theatre, motion picture, trade shows and exhibitions, concerts, as well as the equipment shops, construction shops, and animation and visual effects studios that support all areas of the entertainment industry. Camera technicians, stage employees, projectionists, as well as people working in wardrobe, lighting,

[2] RSBC 1996, c. 113.
[3] RSBC 2019, c. 1.
[4] *Professional Association of Canadian Theatres,* "Covid-19 Impact Survey- One Year On", May 13, 2021.

art direction, set design and construction, special effects, among other areas of motion picture, film, digital internet and television production, are among IATSE-represented workers. Virtually all the behind-the-scenes workers in crafts ranging from motion picture animator to theatre usher are represented by IATSE. There are, at present, seven (7) IATSE Locals in BC (Appendix "A" includes a short description of each of these Locals).

It is noteworthy that the Province's screen based media sector accounted for approximately $4.1 billion in direct spending in BC in 2019.[5] The driving force behind that sector of the economy is the thousands of skilled IATSE Local 891 and Local 669 members and permittees who work on sets and in production. Due in no small part to the fact that these jobs are unionized, British Columbians can (but for contract flipping) have secure employment and a promising career in this sector. The promise of secure employment encourages individuals to invest in obtaining the requisite training to work in this field. The highly skilled workforce this Province offers is a key component to making our Province a premier film-making destination. Technical workers in the film industry are critical to the success of the entertainment industry in BC.

Moreover, it should be noted that from the early days, IATSE has actively participated in the development and growth of the entertainment industry in BC. IATSE's screen-based media Locals (891 and 669) are members of the BC Council of Film Unions, the Motion Picture Industry Association of BC, the BC Federation of Labour, and the Canadian Labour Congress. IATSE's stage Locals (118, 168, ADC 659 and B-778) are members of the latter two organizations and represent theatre, performing arts and tradeshow technicians and are essential to attracting large tradeshows and productions which are critical to the development of arts, culture and entertainment in the Province.

THE LABOUR RELATIONS REVIEW PANEL REPORT 2018 AND CHANGES TO THE *CODE*

On March 16, 2018, IATSE submitted its recommendations to the Labour Relations Code Review Panel (enclosed with this letter for your review). Recommendation #7 of the submission was that the Board extend successor rights to address contract flipping. IATSE emphasized that one of the factors leading to the declining union density in BC, from over 36% in 1999 to 31% in 2012 (to approximately 29% in 2019)[6], is the prevalent practice of contracting out or contract flipping.

In its submission, IATSE emphasized that often the most vulnerable employees bear the brunt of contract flipping arrangements:

> We do conclude, however, that in industries mostly populated by vulnerable and largely unskilled workers, the constant re-tendering of contracts is, in many cases, not a mechanism aimed at achieving efficiencies through acquiring greater expertise or different methods of production but, rather, a mechanism to reduce costs by substituting a cheaper, non-union contractor for a unionized one. **The social cost and impact of this "efficiency" is borne by those least able to bear it, namely, the vulnerable and the precarious employees in that industry. If a union in collective bargaining negotiates improvements in the working conditions for the unskilled and vulnerable people it**

[5] https://biv.com/article/2020/10/bc-film-sector-worth-41b-2019-while-industry-gathers-steam-amid-pandemic#:~:text=It%20remains%20unclear%20how%20much,Media%20Producers%20Association's%20(CMPA).

[6] https://bcbc.com/insights-and-opinions/coverage-context-and-change-an-update-on-unionization-rates-in-b-c.

> **represents, these gains are negated by re-tendering. The effect of constant re-tendering is not only to keep compensation low but also to eliminate improvements achieved through collective bargaining.**
>
> This situation of contracting out and re-tendering is perhaps one of the best examples of a fissured workplace, creating competition among suppliers of low-skilled services on a constant basis to keep wages and benefits as low as possible. **Clearly, this is a major contributor to the continued presence of vulnerable workers in precarious work in some sectors. Stability and advancement through meaningful collective bargaining is not sustainable when the workers are unskilled and the lead employer can reduce costs, keeping them at rock-bottom through an endless series of re-tendering.**
>
> Obligating successor employers in the contract services sector to uphold collective terms and conditions of employment and bargaining rights through the extension of the Code's successorship provisions would effectively thwart tactics used by employers to undermine bargaining rights by contract flipping.
>
> (emphasis added)

At the time of its submission, IATSE was seeking to extend successor rights to protect workers in all industries where contract flipping is a prevalent practice.

On August 31, 2018, the Labour Relations Review Panel issued its Report. The Panel agreed with many of the submissions from labour organizations finding that contract re-tendering is most pronounced in sectors with the greatest precarity.[7]

The Review Panel concluded that "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."[8]

Finally, the Panel acknowledged that employer organizations advocated for a "conservative measured approach and cautioned that any extension of successorship should only be done 'surgically'". Employer organizations were concerned that extensions of successorship beyond healthcare could be de-stabilizing for investment in BC. The Panel stated that initially when successorship provisions were introduced in BC there were concerns regarding the economic impacts on business. However, "businesses are now bought and sold regularly in B.C. without any discernable negative implications".[9]

The Panel ultimately supported a measured approach that addresses the problem in an incremental sustainable manner and recommended that successorship protection be extended to re-tendering of contracts for specified services.

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[7] At page 20.
[8] At page 20.
[9] At page 20.

As a result of the Panel's recommendations, Section 35 of the *Code* was amended to recognize that a contract for services in any of the following industries would be considered a successorship if "substantially similar services continue to be performed":

(a) building cleaning services;
(b) security services;
(c) bus transportation services;
(d) food services;
(e) non-clinical services provided in the health sector;
(f) services prescribed under section 159 (2)(f).[10]

The Panel and the Legislature clearly contemplated that there would be other industries where job security would be undermined by contracting out and thus revised Section 35 to include Section 35(f) and 159(2)(f). The Lieutenant Governor in Council is thus authorized to prescribe services or services in a particular sector for the purposes of the definition of "contract for services" in Section 35. The current successorship provisions of the *Code* do not protect the unionized workers in our sectors from loopholes that employers are able to take advantage of and create a "race to the bottom".

VULNERABILITY OF IATSE MEMBERS

IATSE members working within the arts and entertainment industries face unique workplace challenges which the current legislative framework in British Columbia is ill-equipped to address. As acknowledged in the *Changing Workplaces Review: An Agenda for Workplace Rights*, in Ontario, the arts, entertainment and recreation industry has one of the highest concentrations of vulnerable workers engaged in non-standard employment.[11]

Moreover, over ten years ago a report commissioned by the International Labour Organization *The digital labour challenge: Work in the age of new media*,[12] already identified that flexibility and fragmentation of work have led to an increase in precarious employment in media and entertainment workplaces.[13] At the same time, unions wrestle with the problem of recruiting members among freelance staff in an isolated and fragmented labour market.[14]

While all sectors in which IATSE represents employees have increasingly relied on casual workers, doing project work, in fragmented workplaces, making it difficult to organize generally, there are specific and unique challenges to the different sectors which are important to consider in the context of the particularly damaging impacts of contract flipping.

THE LIVE EVENT SECTOR

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[10] Section 159(1)(f) of the *Code*: The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act* … (f) prescribing services or services in a particular sector for the purposes of the definition of "contract for services" in section 35.

[11] Michael Mitchell and John Murray, Special Advisors, "Changing Workplaces Review: An Agenda for Workplace Rights, Final Report", Ontario, May 2017.

[12] Aidan White, "The digital labour challenge: Work in the age of new media", International Labour Office, Geneva, March 2012, (the *Digital Labour Challenge*).

[13] *Ibid*.

[14] *The Digital Labour Challenge*, *supra*, p. 31.

In the live event sector, there are specific challenges to organizing the workforce which leaves much of the workforce unrepresented. While Local 118 has worked diligently to organize workers, union density remains low in this sector. The loss of bargaining rights due to a contract flip is even more damaging after a hard-fought union certification drive and in the context of a sector that is difficult to organize.

The live event industry is made up of many freelance and casual workers who work for multiple employers under numerous occupational titles, with different forms of contracts for each arrangement. Generally, their workspace changes often and most employees' work fluctuates throughout the year.

Live entertainment workers work on contract for irregular hours. Concerts typically occur at nights and on weekends. Workers put in long hours, at relatively low pay rates. It is common in the industry for shifts to be more than 12 hours. Workers often receive fixed pay rates for a day of work and are at times denied basic entitlements to overtime pay. In addition, wages have stagnated in this industry. One factor leading to the stagnating wages, are the relatively low barriers to entry into this field of work, especially in the less specialized roles performing this type of work. The low barriers to entry create a surplus of labour which creates downward competition and a process of wage regression. Workers are also subject to health and safety hazards – both through dangerous working conditions and repetitive stress injuries. Injury rates hover above provincial averages.[15]

Significantly, only 10-20% of workers in this sector work full time. This is well below the 78.9% of the general workforce that have full-time work.[16] There is no doubt that work in this industry is rigorous and performed under difficult working conditions.

The fact that much of the work is project-based and most of the workforce is part-time, or casual makes it notoriously difficult for employees to create momentum to organize. Moreover, the fact that there are fluctuating numbers of workers at any given time in a bargaining unit makes the bargaining unit a moving target; at any given point, the number of individuals needed to win a representational vote is subject to change.

Making matters even more complicated, is the fact that at present, the Labour Relations Board of BC does not have a standard policy for calculating the number of eligible voters in a proposed bargaining unit in this sector. For example, in the case of ***Eventstar Services Inc. (Re)***, [2012] BCLRBD No. 8, the Board looked at the 90-day period prior to the date of the application for certification to determine the number of individuals in the bargaining unit. On the other hand, in the case of ***Chemainus Theatre Festival Society v. IATSE, Local No. 168***, [2020] BCLRBD No. 77, the Board used the date of the application as the relevant date for determining the number of employees in the bargaining unit. Many casual employees that normally worked in the theatre were thus denied representation. Without the support of the casual employees the Union lost its application vote. Previously, Local 168 had successfully certified two units made up entirely of casual employees.

Thus, not only are employees tasked with organizing a moving target, in a sense, they are forced to do so "blindfolded" due to the lack of transparency and consistency around how voter eligibility will be determined in this industry. This means that even though the *Code* prescribes a 45% threshold of members required in a union certification drive, in this sector, an employer is easily able to inflate the

[15] https://www.worksafebc.com/en/health-safety/industries/arts-entertainment/statistics.
[16] https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410032703.

numbers by reference to an undefined scope of casual personnel. This means that any prudent union applying for certification in this sector must sign up numbers far in excess of the requisite 45%.

Finally, once workers have overcome the many challenges to organizing in this sector, companies are able to contract out a project, or operation of a venue to non-unionized companies.

One example of the damaging impacts of contracting out in this industry took place in 2008, when NASCO employees at Rogers Arena certified with IATSE Local 891. The organizing drive took place over the course of over eight months. In preparing to file the application for certification, IATSE had several meetings at the Labour Relations Board to clarify the test for inclusion in the bargaining unit, since as stated above, there is, to this day, no clear policy on the matter. On February 20, 2009, the Board issued its order of certification for the unit of 330 workers, with five months determined as the timeframe for bargaining unit inclusion. Within days of this certification, the Arena contracted out the work to another labour provider and the newly unionized workers all lost their jobs. Unsurprisingly, although many of those now working in the Arena are union supporters and IATSE members at other job sites, they will not re-certify, as the result last time was the immediate loss of employment, and for those able to secure re-employment, a downgrade to inferior working conditions.

Another, more recent example, is the case of a group of stage and technical employees working for the Granville Island Theatre District Society (the "GITD Society"), Carousel Theatre Society and Boca del Lupo Theatre Society (the "Societies") who certified in several theatres in January 2019. During the certification process, the Union encountered issues with respect to determining the test the Board will apply to decide on the number of employees in the bargaining unit eligible to vote. Union counsel raised this issue with the Labour Relations Board in a letter dated October 2019 (enclosed).

On September 18, 2020, and before a collective agreement was concluded, the contract between GITD Society and Boca del Lupo Theatre Society was terminated. The GITD Society took over the role of Boca del Lupo in operating Performance Works and reduced employee wages from $23.00 per hour to a sliding scale of $20.00-$22.00 per hour. Employees were thus paid at reduced wages for performing the same work.

The Societies currently have a contract to operate certain theatres. However, in **July 2022**, the Societies' management contract will come to an end. The management of the theatres may be contracted out to another employer and if they cannot access the protections of Section 35 of the *Code*, these workers could lose their union representation. Some of these workers may lose their jobs, and the "lucky" ones will likely be hired to work at the very same theatres and perform the same work they had been performing for the Societies at a lower wage rate. The hard-fought bargaining rights and organizing campaign, as well as years of effort at the bargaining table, may have only secure protection for these employees for merely a few months. The advent of unionization in this context meant that tenuously employed workers were finally safe to voice their concerns regarding a toxic culture of bullying and harassment.[17] The loss of their bargaining agent would turn back the progress made in improving the terms and conditions of their employment.

[17] https://www.cbc.ca/news/canada/british-columbia/vancouver-kids-theatre-cuts-ties-with-artistic-director-after-bullying-harassment-allegations-1.5647077.

Finally, yet another example of contract flipping in this industry is the case of a bargaining unit of stage and technical employees of Global Spectra working at and from the Abbotsford Centre (the "Centre"). The certification application was made in November 2016. Just five years later, in May 2021, the City of Abbotsford awarded the contract for managing the Centre to Aquilini Investment Group (AIG). The new contract will commence on **January 1, 2022**. Employees at the Centre now face the possibility of losing their bargaining agent and potentially their employment, as happened at Rogers Arena when AIG cancelled the NASCO agreement following its certification.

While the current successorship provisions under the *Code* will preserve the bargaining rights of a group of food services workers working in the Centre today, they do not protect workers in the Live Event sector working in the Centre. Food services workers and Live Event workers are subject to the same precarious conditions and the same impacts of contract flipping and should be equally protected under the law.

The process of contracting out in this industry and the revolving door of employers has led to a stagnation of wages in an industry in which workers are already subject to difficult working conditions and little to no job security. Contracting out has allowed employers to access a pool of cheap and unorganized labour and defeat any limited union gains, which has contributed to low union density in this sector.

THE SCREEN-BASED MEDIA SECTOR

In the film industry, while a significant proportion of the industry is unionized, production companies not covered by the exclusive jurisdiction of the British Columbia Council of Film Unions' (the "Film Council") Master Agreement, are able to hire non-unionized workers. IATSE has often organized these companies only to then lose bargaining rights when a project terminates. A recognized feature of the film industry is that a production company is created for the sole purpose of producing the film, television movie or series. Each production company is considered a separate employer for a separate production. Employees thus go through the difficult process of certification and negotiation of a collective agreement, only to then have their hard-fought gains eliminated through a contract flip. In these cases, employers can incorporate a new corporation with every new film they make, even though the same individuals are creating the film and largely the same workers are employed. Employers will incorporate a new corporation specifically to avoid obligations to unionized workers.

Such was the case in the Board's decision in ***Santa Buddies Productions Inc. (Re)***, [2009] BCLRBD No. 215, where employees of a production company that was working on a production known as "Space Buddies" had certified and ratified a collective agreement in June 2008. In October 2009, a new production of "Santa Buddies" commenced. The two films were part of the same genre of films produced by the same writer, director and producer. While the Santa Buddies production company refused to enter into a collective agreement with the BC Council of Film Unions (BCCFU), it entered a voluntary recognition agreement with the Association of Canadian Film Craftspeople (ACFC West) which had negotiated for lower wages than the BCCFU's collective agreement. By incorporating as a new company, Santa Buddies was able to avoid any obligations to its former employees. The Labour Relations Board found that there was no discernable continuity of business between Space Buddies and Santa Buddies and thus refused to find that a successorship had taken place, despite the companies having the same principal officers, addresses, cast and crew. The voluntary recognition agreement between ACFC West and Space Buddies and Santa Buddies enterprise continues to this day with the BCCFU unable to organize the workers of this employer.

Finally, animation and visual effects artists face some of the most serious challenges to organizing in the Screen-Based Media Sector. Employees are usually hired on short-term contracts and move from studio to studio with regularity. As with the live action industry, most employers incorporate each project separately. Despite the fact that the same individuals are in control of the enterprise, employers seek to shed any previous liabilities to their workforce. Often when employees are rehired at the same location/employer, it is under a contract to perform the exact same work but for a different corporate entity. The work is project-based, and short term, making these sectors historically difficult to organize, and BC visual effects facilities are currently non-union.

Animation and visual effects workers are discouraged from unionizing or reporting illegal employment practices such as unpaid overtime, because they rely on the favour of employers to be hired for the next contract. Employers are thus able to take advantage of contract flipping specifically to avoid unionization and maintain a precarious and vulnerable workforce.

In October 2020 after years of organizing, Local 938 certified an animation employer. However, union density in this sector remains extremely low, with only about 200 unionized BC animation workers represented by Local 938, miniscule in a sector that incurs approximately 1 billion dollars in labour costs annually. The animation sector is heavily supported by the government through tax incentives - in 2019/20 for every dollar spent on BC labour, an average of $0.38 was returned to companies through tax credits for live action, visual effects, and animation work.

CONCLUSION

We submit that designating the Live Event and Screen-Based Media Services described in this submission as falling under the definition of "contract for services" under Section 35 will meet the clear aims of the Legislature in carving out specific protections for sectors that have been significantly impacted by contracting out of services. Designating services in the sectors enumerated would be an incremental yet important step in correcting some of the more troubling trends leading to precarity of employment in these sectors. Making this order would ensure that the aims of the *Code* are balanced and that contracting out is not used to defeat employees' constitutional rights to freely choose their representatives.

Finally, designating the services provided by workers in these sectors as prescribed services will be essential to ensuring a sustainable reopening of BC's arts and culture industries. On this note, the following excerpt from the recent report *Art, now more than ever: 2021-26 Strategic Plan*[18] by the Canada Council for the Arts bears consideration:

> Art and culture have played an important role in people's daily lives throughout the pandemic, although the arts—like other sectors—have had to suspend many activities. Audiences are still engaging with art, although the opportunities for most artists and cultural workers to practise their craft have dwindled to almost nothing. This situation will not continue indefinitely—the sky clears after even the most destructive storms. We need artists to imagine a new reality now more than ever.

[18] Canada Council for the Arts, "Art, now more than ever: 2021-2026 Strategic Plan", April 2021.

> For this to happen, we need an arts sector that is supported, valued, resilient, inclusive, accessible, equitable, and sustainable. We need a sector that is able to create and share artistic and literary experiences, limited only by the imagination. We need a sector that can take better care of its workers and remunerate them adequately.

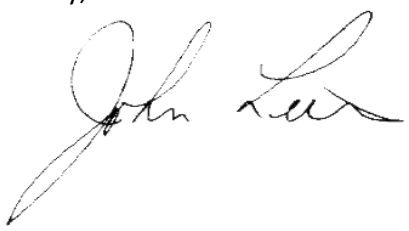
As stated, the pandemic has exposed the fragile underpinnings of the arts and culture industries, one where arts and culture workers knit many pieces into a low to modest income arts career; the original "gig" economy. The pandemic has not created precarity in this field, but it has uncovered the pressing need for reforms. While monetary investments from Federal and Provincial levels of government have been critical to the survival of arts and entertainment sectors, they must be accompanied by basic legislative changes to ensure that the benefits are distributed equitably and reach the hardworking employees working on the ground in these sectors.

Protecting the services of unionized workers in the arts sectors are an essential, if not the most essential way to ensure that workers in the arts are treated with respect and remunerated adequately. In industries that are known for their instability and casual workforces expanding successorship provisions to these workers will provide much needed protection and security.

Implementation of the regulatory change requested as soon as possible, would disincentivize and reduce contract flipping and protect workers in this province.

Thank you for your time and consideration of this matter.

Sincerely,



John M. Lewis
International Vice President and Director of Canadian Affairs

cc: The Honourable Melanie Mark, Minister of Tourism, Arts, Culture and Sport
Bob D'Eith, Parliamentary Secretary for Arts and Film
Adam Walker, Parliamentary Secretary for the New Economy
IATSE Locals 118, 168, 669, 891, 938, ADC 659, B-778
IATSE Canadian and Western Canadian Offices
BC Federation of Labour
BC Labour Relations Board

APPENDIX "A"

IATSE 118 (Stage – BC except for Vancouver Island)

Since 1904, IATSE Local 118 has been an integral part of Vancouver's performing arts almost since Vancouver's inception. Local 118 has established a tradition of excellence that it will continue as it enters its second century. With over 400 members, some are full-time employees of various venues, but most work on-call when work is available.

Local 118's employers are the who's who of the Vancouver Arts and Entertainment Scene. In addition to Vancouver's Civic Theatres (Queen Elizabeth, Playhouse, Orpheum, Annex), the Arts Club Theatre Company and the Cultch, we provide skilled technical labour to the Vancouver Opera, Vancouver Symphony, Ballet BC, Vancouver Recital Society, and supply local crews for scores of touring rock shows and theatrical productions at Vancouver theatres, Abbotsford Centre, the Pacific Coliseum, BC Place and elsewhere.

IATSE Local 118 members were responsible for skilled technical production work for Expo 86 and many aspects of the 2010-Olympics; and continue to perform that work for the Pacific National Exhibition.

IATSE 168 (Stage – Vancouver Island)

IATSE Local 168 has jurisdiction for theatre work on Vancouver Island, where it has agreements with eight employers from Victoria to Campbell River. Local 168 represents over 200 Members, and an additional 100 permittees working towards membership. The Local represents theatre workers in lights, sound, video, wardrobe and staging work, as well as box office, usher, bartender, and janitorial positions. Other Local 168 workers engage in pre-production construction and finishing of sets, properties, wardrobe and painted elements for stages across North America. Local 168 provides crew for concerts and events, including load in and load out crews, riggers, forklift and boom lift operators, as well as sound and lighting operators. Also represented by the Local are arts administration workers, projectionists, drivers, and first aid attendants.

ADC 659 (Associated Designers of Canada)

Within the live performance industry, designers are responsible for the conceptualization and supervision of the implementation of the creative elements of a show or production. They are hired to design theatre, dance, opera, or other live entertainment in collaboration with the director, choreographer, or other creative team members. For the most part, designers can be categorized into five main disciplines: set, costumes, lighting, video, and sound, although there are additional subcategories like props, or hair and makeup. Canadian designers are classified as independent contractors, and work on each live performance on an individual contract, typically outside of provincial employment standards legislation. The Associated Designers of Canada was founded in 1965 as the representative voice for live performance designers in English Canada. On January 1, 2021, the ADC was granted a charter from the International Alliance of Theatrical Stage Employees, forming a new autonomous local: Local ADC659 — the only nationwide IATSE charter in Canada.

ICG 669 (International Cinematographers Guild, Western Canada)

The International Cinematographers Guild Local 669 membership is involved in all aspects of film and television that pertains to the camera. ICG 669 represents membership across Western Canada consisting of Directors of Photography, Camera Operators, Camera Assistants, Unit Publicists, Unit Still Photographers, Electronic Camera Operators and Assistants, Video Assist, Digital Engineers and Technicians, Data Management Technicians, Drone Technicians, Remote Head Technicians and Camera Trainees in all phases of filmed or electronically recorded theatrical feature films, films for television release, internet and television series productions.

IATSE Local 891 (Motion Picture Technicians, BC)

IATSE Local 891 represents over 15,000 professional artists and technicians across 19 departments who work in film and television production in British Columbia. We support all genres of production at all budget levels and our members made some of the biggest feature films and some of the longest running and most successful television series ever screened. Our award-winning members are internationally renowned for their expertise and skill and, among others, have won or been nominated for Academy Awards, BAFTAs, Emmy Awards, Canadian Screen, and Leo Awards.

From our earliest days, we have actively participated in the development and growth of the film and television production industry in BC and marketed our Province as the premier filming destination. Our approach is to supply world class talent and act to ensure a stable labour relations climate within our industry. IATSE 891 provides its members with ongoing training opportunities with a strong emphasis on safety. 891 also provides an extended health and dental plan, an RRSP plan, an employee and family assistance plan, and access to other benefits.

CAG 938 (Canadian Animation Guild, BC)

Animation as an industry can be defined as the rendering of imaging services provided to television, cinema, video games or advertising. Though there are many different positions within Animation, they can be broken into three main sectors: Pre-Production, Production and Post-Production. Animation workers across all of these sectors are predominantly hired as full-time employees on a contract-to-contract basis into projects and productions that were not willing or able to allow those same workers a seat at the table when it came to substantial concerns about their own workplaces. That all changed in October of 2020 when, in the midst of a global pandemic, workers at Titmouse Vancouver fought to create the first IATSE union for the Canadian animation industry. With 98% of workers voting in favour of representation, the Canadian Animation Guild Local 938 was born. Now the Guild fights for the rights of current and future members to build real collective change for our industry and our communities.

IATSE B-778 (Arts and Cultural Workers Union)

In 2020, IATSE chartered a new local called the Arts and Cultural Workers Union (ACWU), IATSE Local B778 to support the organizing efforts of precarious gig workers in the visual arts sector in British Columbia. These workers work in a variety of non-profit arts organization settings including museums, galleries, and arts festivals. They work in classifications including arts administrators, curators, preparators, and installers. Many of these arts organizations rely on temporary gig workers to supplement the core program workforce for the installation of new shows, exhibitions, and for temporary event production.

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES
OF THE UNITED STATES, ITS TERRITORIES AND CANADA
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LABOUR RELATIONS CODE REVIEW PANEL

BY EMAIL: lrcreview@gov.bc.ca

Attention: Sandra Banister, K.C., Michael Fleming, Lindsie Thomson

I am writing on behalf of the Membership of IATSE Local 168, the Vancouver Island based Local of the International Alliance of Theatrical Stage Employees, where we represent over three hundred (300) workers engaged at nine employers from Victoria to Campbell River. We are stage workers, pre-production workers building sets, costumes, special effects and properties, box office staff, projectionists, arts administrators, ushers, concert crew, and custodians of national historic sites in which we support the cultural fabric of our communities.

In considering possible revisions to the Labour Relations Code, we would like to focus on two particular areas of concern for our workers. The first is the definition of the bargaining unit in the workplace certification process, the second is successorship in our workplaces.

When we engaged in the process of organizing the workforce of the Chemainus Theatre Festival Society in late 2019, we were damaged in our efforts to represent these workers by two decisions of the Board. In the decision on *Chemainus Theatre Festival Society v. IATSE, Local No. 168, [2020] BCLRBD No. 77*, the Board used the date of the application as the relevant date for determining the number of employees in the bargaining unit. Therefor many of the casual employees who regularly worked at that the theatre were thus denied representation, despite years of service with the employer. As an industry, our workforce is determined by the needs of the production, so crew sizes vary from as small as four (4) to as many as one hundred and thirty-one (131). Most of our workers are engaged by multiple employers, and the casual nature of this work is a basic operating model of the live entertainment industry. The Board decision stripped out workers who needed and wanted representation, hence denying them their rights under the Charter.

The Board also decided that, due to the COVID-19 pandemic, the casual workers had no continuing interest in the workplace. The choice to limit workers' rights due to a public health emergency again denied them their choice to determine their working conditions. Without the support of those casual employees the Union lost its application vote. Previously, we at Local 168 had successfully certified two (2) units made up entirely of casual employees.

We respectfully request that the Review Panel recommend that casual workers in workplaces be valued as much as full time workers, so that their worth as humans and workers is credited for inclusion in the determination of bargaining unit composition.

Our second area of concern is successorship. In the live entertainment industry, workers are employed by multiple employers, many of whom who do not own the venues in which they operate. In the jurisdiction of IATSE Local 168, many of our employers are not-for-profit entities who are operating spaces owned by civic governments. If the owners of the facilities decide to change the operators, in order to reduce civic contributions to the arts or for other reasons, our workers are endangered because our sector is exempted from the right to have our hard won terms and conditions respected and retained in the change. Again, as in our submission regarding unit definition, we seek to have the choices workers make respected and codified. We appreciate that the Code protects some workers from contract flipping, but we believe that all workers should have these protections.

We at IATSE Local 168 would welcome the opportunity to have further discussions with the Review Panel on our submission. We understand that there are many things for the Panel to consider in review of the Code, and we are aware that we are but a small unit in a small industry. Nonetheless, we value our workers, and ask that the Code be changed to mirror that fact.

Respectfully yours,

George Scott
President, IATSE Local 168
president@iatse168.com

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS UNION LOCAL 118

Labour Relations Code Review Panel:
Michael Fleming, Sandra Banister, K.C, Lindsie Thomson

Thursday March 21, 2024

Rob Sheck
Business Manager
Ashley Duncan
President

Dear Panel Members:

Please accept this letter as the submission of the International Association of Heat and Frost Insulators and Allied Workers, Local 118 (the "Insulator's Union").

The Insulator's Union submits that there is a need for the Code to be rebalanced in several ways, but we will leave these general submissions to others. We intend to focus on construction.

The Insulators Union will attend the May 6 in-person meeting in Surrey and would like to make an oral presentation to the Panel.

The Insulators support and endorse the recommendations proposed by the British Columbia Federation of Labour. Rather than repeat those recommendations, we will focus our submission on the construction industry.

The construction industry is an important part of the Provincial economy. It directly employs over 200,000 workers in British Columbia and accounts for approximately 10% of the Province's GDP.

We are asking the Panel to recommend the immediate removal of Section 41.1 of the Code and the striking of a construction labour relations review panel.

Insulator's Union

The Insulators Union is a craft union construction union within the meaning of Section 21 of the Code. We are a group of approximately 600 journeypersons and apprentices working in the mechanical insulation industry in British Columbia, Yukon and the Northwest Territories. Members of the Union maintain and alter mechanical insulation during new construction and in existing structures. Mechanical insulation is used to control heat loss, to provide personal protection and to comply with environmental standards.

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INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS UNION LOCAL 118

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The Insulators Union is one of the few remaining true craft unions. All our bargaining relationships are craft based and we do not represent members of other crafts. Like most other building trade unions, we have a world class Red Seal Training Program, and we provide health, wellness, and pension benefits to our members.

In addition to these programs, we are also involved in several other initiatives designed to protect and promote the interests of our members. Properly installed, Mechanical Insulation provides significant environmental benefits and significantly reduces building operating costs. Through its "Green Jobs, Great Jobs campaign", the Insulator's Union and its employers work together to promote the use of mechanical insulation explaining its benefits to governments and construction groups. This initiative and others like it have raised the profile of the Mechanical Insulation Industry and promotes the use of mechanical insulation installed by Red Seal Certified skilled journeyperson mechanical insulators and indentured Apprentices.

Construction Labour Relations

Unfortunately, the current scheme of construction labour relations has inhibited these efforts and had other negative effects on the Union and its members. As the Panel knows, as a craft construction union, the Insulator's Union is required to belong to and bargain through the Bargaining Council of British Columbia Building Trades Unions.

Members of the Union work for approximately thirteen (13) active contractors. Only three of these contractors are now members of the CLRA (employing less than 2% of our members). For member contractors, terms and conditions of employment are set out in an agreement reached through the bargaining structure in place between CLRA and BCBCBTU ("the CLRA Agreement").

While other signatory contractors negotiate directly with the Insulators Union, we have a collective interest in maintaining a single master agreement to standardise the terms and conditions of employment and so independent contractors continue to use the CLRA Agreement as a template and will not negotiate until that agreement is negotiated.

While we are thus left to choose between two untenable options: have our members and our employers working under different agreements in competition with one another or bargain through the BCBCBTU.

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS UNION LOCAL 118

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We have been forced to enter an independent relationship with true craft contractors that dominate our industry and the hours that mechanical insulators work in the province of B.C.

The BCBCTU and Section 41.1 has not allowed our industry, our members of our signatory contractors negotiate progressive, innovative, or modern approaches to industry needs or modern labour relations approaches. We believe that the sectorial approach to the industrial constriction work in B.C. remains to make, but the restrictions on the BCBCBTU's constitution does not allow us to address the needs and concerns of our membership who are employed in the Commercial/Institutional work in B.C. Our hours worked in that sector dominate the employment hours. We have averaged over 75% C/I hours of employment over the that last 5 years.

As Chair Fleming recognised in his Interim Report regarding a Section 41 Inquiry into Labour Relations in the British Columbia Building Trades Sector of the Construction Industry, the current system of collective bargaining between BCBCBTU and the CLRA is profoundly flawed.[1] That report was made in the context of a fixed legislative scheme that was designed to undermine and weaken the building trades.[2]

The Legislation that created and supports this system needs to be changed.

The Insulator's Union is committed to modernizing the industry in which it operates (and thereby protecting and creating work for its members). The present bargaining model acts as an impediment to achieving this goal. The present bargaining model gives no opportunity to engage industry employers at the bargaining table or to otherwise address concerns through amendments to the terms and conditions of employment under which members work.

This was noted by Chair Fleming at paragraph 70:

"70 The existing collective bargaining structures and processes make it very difficult for the parties to development innovative solutions to the real challenges which exist in some segments of the building trades sector. This inability undermines the competitive position of the sector."

Under the current system, bargaining between the CLRA and the BCBCBTU takes years to complete. Unions are forced to accept whatever the CLRA is

[1] See for example paragraph 69 & 70.

[2] See the analysis set out in the BC Federation of Labour paper Restoring Fairness and Balance in Labour Relations: http://bcfed.ca/sites/default/files/attachments/lrb%20paper%20-%20final%20with%20pullout%20quotes.pdf

**INTERNATIONAL ASSOCIATION OF
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prepared to offer and have no mechanism to either engage their employers in meaningful discussion or to exercise any economic pressure on their employers.

In 2013, we applied under section 42 of the Code for consent to withdraw from BCBCBTU. Our application was dismissed in BCLRB No. B121/2014. At that time, the CLR was able to assert that it had 8 Insulation contractors as members and that those 8 contractors employed most of our members. As set out above, this is no longer the case. There are now only 3 Insulation contractors who belong to the CLR, and they employ less than 2% of our membership.

One of the impediments to leaving the Council was the decision of the board in Bargaining Council of British Columbia Building Trades Unions and Construction Labour Relations Association, BCLRB Letter Decision No. B115/2002 where a Panel of the Board gave reasons following its review of the BCBCBTU constitution after the repeal of Part 4.1 of the Code. One of proposals before the panel was an amendment to make membership voluntary. In a sparsely reasoned analysis, the Panel relying on Section 41.1 ruled that membership was mandatory for unions which have a bargaining relationship with a member of the CLRA: *"We find that mandatory membership in the Bargaining Council is directed by statute."*

While the Insulators have always maintained that this decision was wrongly decided, no building trade union has ever been allowed to leave the Council. This interpretation of Section 41.1 of the Code gives the CLR a significant statutory advantage which they have used over time to slowly erode the rights of building trade unions and their members and prevent the engagement needed for progressive reforms.

Conclusion

The Bargaining Council was created in the late 1970s to moderate the power of craft unions. With that goal in mind, it was wildly successful. Unfortunately, this success came at a significant cost for workers and the industry in general. In what was once a thriving industry where employers had standardised agreements and almost all workers were well trained and enjoyed the benefits and protection of trade union representation, the construction industry is now a fragmented. Terms and conditions of employment vary greatly, employees have relatively few rights and legitimate contractors are forced to complete with unprincipled contractors who use unions of convenience and under skilled workers.

**INTERNATIONAL ASSOCIATION OF
HEAT AND FROST INSULATORS AND
ALLIED WORKERS UNION LOCAL 118**

These problems were recognised in the 1990s by the Construction Industry Review Panel and Legislative changes were introduced to address these problems. That Legislation was unfortunately short lived as the Liberal Government in 2001 removed almost all the construction specific legislation in the Code leaving only Section 41.1 which was designed to undermine building trades union.

It is respectfully submitted that this intentionally unbalanced provision needs to be removed from the Code and we ask the Panel to recommend its removal along with the striking of a panel to perform a more general review of construction labour relations.

Yours truly,

Rob Sheck
Business Manager

RS/lc

Rob Sheck
Business Manager
Ashley Duncan
President

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On February 20, 2024, the Labour Relations Code Review Panel appointed by the Minister of Labour (the "Panel") sought written submissions from stakeholders on proposed changes to the *Labour Relations Code* (the "*Code*"). The following is the submission of the International Brotherhood of Electrical Workers, Local 213 (the "IBEW 213").

The IBEW 213 is a trade union for the purposes of the *Code*. It represents employees in many provincially regulated industries, and holds many certifications issued under the provisions of the *Code*. The IBEW 213 is member of the B.C. Federation of Labour and the B.C. Building Trades, and agrees with the substance of the submissions made by those organizations. However, the IBEW 213 wishes to make its own submission on a matter of particular concern to it.

The IBEW 213 has a specific concern about the provision about picketing in the *Code*.

Proposal: Clarify the definition of "picketing" in the *Code* to make clear that it includes virtual picketing as well as in-person picketing

The IBEW 213 is concerned that the definition of "picketing" in the *Code* will be read by the Board as requiring the physical attendance of picketers at each and every worksite. To our knowledge, the Board has never dealt with this issue, but the IBEW 213 is concerned that a ruling that requires the attendance of picketers on a line will cause problems with remote employees who do not routinely attend a worksite.

Picketing is defined in section 1 of the *Code* as follows:

> "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 product, 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 restrict access to or egress from that place of business, operations or employment or prevent employees from working at or from that place of employment;

This definition could be read to mean that a picket line would require actual strikers to attend each and every place of business, operations and employment. Normally, having picketers physically attend at every worksite is a routine practice for trade unions on strike, but the recent rise of the number of employees who work remotely in vehicles or at home have made such a practice more difficult.

If employees work from home, or work remotely from their vehicle, they may never physically attend a common worksite in the course of performing their duties. Thus, if a labour dispute occurred, these employees might never encounter a traditional picket line with picketers physically present. Yet, these employees might be asked to continue to perform work that they clearly know is struck work.

This problem was recently highlighted in the national strike by the Public Service Alliance of Canada ("PSAC") last April. During that strike, the PSAC made it clear that members assigned to work from home that continuing to work during the strike would be crossing the picket line, and could face internal discipline (see https://psacunion.ca/union-members-stick-together-win-together).

The reason that the IBEW 213 is concerned with this issue is, once again, highlighted by its bargaining relationship with Rogers. As we set out above, cable installers working for both Rogers and cable contractors are assigned work within each unionized geographic location. During a labour dispute, the IBEW 213 would expect both groups of members to respect the picket line and not perform work in any struck area.

Historically, setting up a picket line at Rogers (and its predecessors) has been a fairly straightforward process. Rogers employees used to be physically dispatched out of area reporting stations. Employees would attend their reporting station each day and pick up their daily work orders, along with any equipment or vehicles they would need for the day. They would then spend the bulk of their day either driving, or servicing customers at their homes or businesses. They would then return to their reporting station at the end of the day to hand in their paperwork and return any equipment or vehicles.

Contractors would get dispatched the same way. They would also have to attend the reporting station for the area they were assigned for dispatching and to dropping off daily paperwork.
Since employees of both Rogers and the cable contractors had to start and end their days congregating in one of a handful of reporting stations, the IBEW 213 could effectively prosecute their strike by setting up picket lines at the affected reporting stations. That way any contractors assigned to work in that area, or any Rogers employees contemplating crossing the picket line, would encounter a physical picket line before being able to commence struck work. It was easy for the IBEW 213 to set up their lines, since there are only a few reporting stations in the unionized areas, and this picketing also had the effect of largely limiting picketing to reporting stations themselves, and not customer locations.

This is, in fact, what IBEW 213 did during its last two work stoppages with Rogers and its predecessors. The picket lines in those disputes were largely confined to reporting stations, with the exception of some "flying pickets" set up at customer premises when management attempted to perform bargaining unit work.

However, technology has changed dramatically since the last work stoppage in the 1990's in a way that now renders a picket line at a reporting station less useful. Specifically, Rogers now dispatches

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work remotely. Both its employees, and the employees of cable contractors, receive work orders on tablets in the morning. Almost all of the employees take company vehicles home at the end of the day, so once they receive their daily work orders, they simply drive from their homes to their first customer call. They can also do all of their paperwork remotely, so at the end of the day they can simply drive home from their last call. The only time they need to attend a reporting station is to pick up equipment, but employees typically keep extra equipment in their vans to avoid frequent trips.

Accordingly, the IBEW 213 now has no way to ensure that any employee or contractor wishing to honour a picket line will actually encounter a physical line if they attempt to perform struck work. These employees and contractors could spend their whole day performing struck work and never encounter a picketer.

The only way for the IBEW 213 to ensure that their line was being honoured would be through an extensive "flying pickets" campaign. However, that would be problematic in two ways. First, it would be difficult to find where all the worksites were each day and get picketers to each location. Second, it would result in a number of picket lines set up at customer homes and businesses, which may result in a labour dispute spreading into the community. That is not sound labour policy.

With technology leading to increases in the number of employees who work remotely, the Legislature should ensure that the *Code* keeps up. Accordingly, the definition of picketing should be amended to make clear that a picket line does not require physical picketers at each and every possible worksite.

Recommendation

The definition of "picket" in section 1 of the *Code* should be amended to ensure that it covers both physical and virtual picket lines.

Respectfully submitted on behalf of the IBEW 213.

Jim Lofty
Business Manager

IBEW British Columbia Provincial Council

March 21, 2024

Harry Bains, BC Minister of Labour
Suite 600, Oceanic Plaza
1066 West Hastings St.
Vancouver, B.C.
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Dear Labour Relations Code Panel:
Via email: lrcreview@gov.bc.ca

Re: Proposed Changes to the Labour Relations Code

Overview and Background

The International Brotherhood of Electrical Workers BC Provincial Council consists of five local unions including Locals 213, 230, 258, 993, & 1003. Together we represent over 15,000 workers in various public and private industry sectors, including energy utilities, communications, transmission, shipbuilding and repair, data/ telephone and technology, electrical manufacturing, electrical construction and more. The IBEW has a long history. For nearly 125 years since our first charter was signed in British Columbia we have been advocating for our diverse workforce and fostering relationships that continue to build the legacy of electrification, clean energy, and resource production that our province has to offer. The IBEW is proud to work with all levels of government and First Nations communities, to help achieve the mutual goals of its working-class members and the labour movement.

First, we would like to thank the Labour Minister and the current BC Government for recognizing the importance of holding a review of the BC Labour Code on a five-year cycle. From our institutional perspective, there is little of more importance than the ability for workers to convey their interests in balancing the socio-economic weight of their working terms and conditions. One of the few ways governments can assist with that pursuit is through a fair and balanced Employment Standards Act, Occupational Health & Safety legislation and our Provincial Labour Code.
This is an incredible opportunity for workers and workers' representatives to offer up their views and experiences in respect and context of labour relations in British Columbia.

We also recognize the importance of remaining flexible in bringing forward legislation outside of the five-year cycle to deal with worker injustice as demonstrated in Bill – 9, allowing workers the ability to recognize other workers legal picket lines who work in a federal jurisdiction and share the same workplace. As well as the ever-advancing technology or organizational shift in employment as recognized and delivering on behalf of workers trying to carve out a living in the gig economy.

In the 2019 Labour Code Review, you brought back the ability of a bargaining unit to gain recognition through a remedial certification, and I'm pleased to say this is one returned feature to the Code that has proven absolutely necessary for several industries like construction, the food and agricultural industries, where many workers are transient and easily taken advantage of. We are pleased to announce that one such employer certified on Vancouver Island, Aurora Electric, is now party to the standard CLRA construction collective agreement and continues to bid residential apartments and condominiums successfully over two years after the awarded remedial certification. This proves to the entire industry that this is not only achievable for the electrical construction marketplace, but also for the dozens of electrical workers that remain employed at Aurora, and that it is also a financially viable path forward for newly unionized electrical contractors.
And therefore, our IBEW proposal seeks to change the BC Labour Relations Code to recognize the standard craft construction agreements.

Construction Sector Transitional Bargaining

Since the 1970s the BC Labour Relations Code required all construction unions to bargain as a council, the British Columbia Bargaining Council of Building Trades Unions (BCBCBTU) with the Construction Labour Relations Association of BC (CLRA). This was legislated to bring about a harmonized single round of bargaining to the construction industry, and to eliminate *whipsawing* or *leapfrog bargaining* in construction. Which included playing the monetary compensation gap advantages of one craft over another in the same bargaining year working on the same projects, exposing the same construction clients to multiple strikes by different craft unions, holding up their projects.

As it now stands in the BC Labour Relations Code, employers are entitled to bargain their own agreement creating multiple "standard" collective agreements for the same craft, or NO-standard at all for unionized craft construction employers.
This non-standard approach will always allow one contractor or contractor group an undue advantage in bidding for the same construction projects, using the same workforce provided by the recognized craft construction unions. This creates downward financial pressure to reduce wages, benefits, and working conditions on all workers employed under the latest "current" set of standards.

In its current form construction bargaining is a loose hybrid of broader-based sectoral bargaining and single enterprise bargaining, or loose coalitions of like-contractors coming together to negotiate as another entity. There is a broader sectoral agreement already legislated between the employers belonging to the Construction Labour Relations Association of BC and the British Columbia Bargaining Council of Building Trades Unions, however newly organized contractors can and typically do negotiate their collective agreements separately, apart from the CLRA.

Throughout the 1990's, the IBEW in BC ran over 100 organizing campaigns with successful applications for certification in most of those cases, which resulted in three temporary collective agreements. Clearly, hundreds if not thousands of workers wanted a union to represent them in their workplaces but were ultimately denied the opportunity of Union representation with their electrical contracting employer, due solely to no real prescribed standard bargaining agreement in place as a mutual goal. If success was measured in disrupting the electrical construction marketplace, we were all that and then some. However, that is not how success can be measured. When it comes to the goals of lifting working conditions for construction electricians, success must be measured in the long-term continued employment of workers in their chosen craft with the employer who hired them for their experience and skills.

The two major hurdles in achieving the first collective agreement in electrical craft construction was the increased monetary costs, understandably a legitimate business concern. The second hurdle was more of a perceived hurdle in the idea that somehow the union would in some way take control of the employer's business. Again, this is an old wife's tale baked in misnomer.

In addressing the real issue of upsetting the financial balance and well-being of the newly unionized construction contractor's financial well-being.
The IBEW local unions of BC propose a mandatory or standard body collective agreement comprising of non-monetary standards recognized as the CLRA/ BCBCTU construction agreement for each craft union.

At the same time, a temporary transitional monetary bridging agreement is negotiated between parties that will bring newly unionized employers to be represented by the CLRA through the standard craft agreements, without diminishing working rights or established industry standardized language.

With only wages and benefit values to work from would result in an expedited bargaining process with minimal work to do, and with the continued assistance from the BC Labour Relations Board would result in a highly prescribed and successful first round of bargaining.

Workers that certify a construction company or vote to change their exclusive bargaining agent must enter a contentious bargaining period while maintaining company operations. This adds uncertainty while trying to meet the requirements of stakeholders on existing construction jobs.

Article 55 of the BC Labour Relations Code details the process of negotiating first collective agreements should the parties be unable to. This clause allows for binding arbitration that will enable an agreement and serve the wishes of employees who wish to join the union without any devastating disruptions to an employer's financial operations.

An expansion of Article 55 to include craft union bargaining the construction sector that will allow employers to meet the demands of their existing construction projects while adhering to the broader-based CLRA-BC agreement. The IBEW proposes that ONLY **monetary** issues of wages, Vacation/ Holiday Pay, the *value* of medical/dental, and retirement contributions, be subjected to the **transitional bridging agreement** via binding arbitration as the CLRA-BC agreement consequential sets out the conditions for the broader construction sector. The proposed transitional agreement should not exceed eighteen months provided that existing projects are completed within that timeframe.

A move towards broader-based sectoral bargaining for the construction sector ensures that both workers and employers operate under the prevailing working standard terms and conditions, minimizes the time in negotiating new and different construction collective agreements, while safe-guarding the standards negotiated in previous hard-fought rounds of bargaining by both employers and workers, in BC and promotes labour harmony during cost sensitive projects.

Again, we thank you for your time and consideration in every proposal the working panel gives to proposals, and the BC Provincial Government in providing the space and time for allowing for the opportunity to exist in making British Columbia a better place to work and live.

Respectfully Submitted,

Phil Venoit, Chair
IBEW – BC Provincial Council

INTERNATIONAL LONGSHORE & WAREHOUSE UNION CANADA

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LABOUR RELATIONS CODE REVIEW PANEL

Submission By
International Longshore and Warehouse Union – Canada
(ILWU Canada) – March 14, 2024

Submitted by Email:
lrcreview@gov.bc.ca

Labour Relations Code Review Panel
Attention: Panel Members: Sandra Banister, K.C., Michael Fleming, Lindsie Thomson

Concern: The Labour Relations Board ruled that the picketing exception in the definition of strike which allows workers to refuse to cross another union's picket line applied to picketing by unions regulated by the BC Labour Relations Code but not federally regulated unions.

Solution: Amend definition of "strike" in Section 1 by expressly including picketing by federally regulated unions in the picketing exception

Change: "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 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 **or that is conducted by members of a bargaining unit engaged in a lawful strike or lockout under the Canada Labour Code,**

and "to strike" has a similar meaning;

Rationale:

1. Picketing is not a right created by statute. Picketing is lawful because of the common law and exists independent of any statutory regime. Picketing has evolved under the common law and in many jurisdictions, like BC, it is restricted and regulated by statute. In other jurisdictions, such as federal undertakings regulated by the *Canada Labour Code*, picketing is lawful on its own. because the common law allows it.

2. The Supreme Court of Canada explained:

> 62 … all picketing is permitted unless it can be shown to be wrongful or unjustified (the "wrongful action" model). It defines wrongful or unjustified picketing as picketing that involves a tort (a civil wrong) or a crime (a criminal wrong).
>
> Pepsi-Cola Canada Beverages (West) Ltd. v. R.W.D.S.U., Local 558, 2002 SCC 8 at para. 62

3. The BC *Labour Relations Code* does not provide the Labour Relations Board with the authority to make orders about the manner in which a federally regulated union conducts picketing a provincial employer's place of operations. Picketing by a federally regulated union

is not considered by the Labour Relations Board to be picketing permitted under the BC Labour Relations Code.

4. The *Canada Labour Code* leaves regulation of picketing exclusively to the nation's superior courts applying the common law:

> The Canada Labour Code makes no mention of picketing on the apparent assumption that it is a matter of property and civil rights within the provinces' jurisdiction. It follows that the right to picket and the method of picketing have to be found in the common law. The right to picket is part of the right of every citizen to peacefully disseminate information that is not libelous, slanderous or otherwise unlawful. If this right is abused so that it becomes something more than what I have previously mentioned in that it amounts to a tort, it can be restrained.
>
> *Moffat Communications Ltd. v. Hughes 1*975 CarswellBC 281, [1975] W.W.D. 120, 55 D.L.R. (3d) 701, at para 29.

5. The federal and provincial legislatures have the constitutional authority to regulate picketing in areas where federal and provincially regulated workers work, which sometimes overlap. However, the BC Code does not provide the Labour Relations Board the authority to regulate federal picketing.

6. In 1981, the BC Court of Appeal ruled that the legislature has the jurisdiction to permit the Labour Relations Board to regulate federal picketing at provincial worksites, but that BC Code had not done so.

> *British Columbia Ferry Corp. v. TWU, [*1981] B.C.J. No. 1193, at para. 15.

7. The Board has reviewed legislative changes in determining the intent and purpose of the BC *Labour Relations Code* when interpreting provisions, include differences from the predecessor *Trade Union Act.* Under the *Trade Union Act*, a trade union and any other person could picket during a strike which was not illegal at certain locations.

8. The *Trade Union Act* made it clear that all other picketing was prohibited except during a strike which was not illegal.

> 3. (1) Where there is a strike that is not illegal under the Labour Relations Act or a lockout, a trade-union, members of which are on strike or locked out, and anyone authorized by the trade-union may, at the employer's place of business, operations,

> or employment, and without acts that are otherwise unlawful, persuade or endeavour to persuade anyone not to
>
> (a) enter the employer's place of business, operations, or employment; or
>
> (b) deal in or handle the products of the employer; or
>
> (c) do business with the employer.
>
> *Parkland Developments Corp. v. C.J.A., Local 125*1, 1975 CarswellBC 1570, [1975] 1 Can. L.R.B.R. 339, citing the *Trade-Union Act*, 1959 (B.C.), c. 90

9. The *Trade Union Act* was replaced by the BC *Labour Relations Code* which allow picketing at an employer's place of business operations. This included picketing by provincial unions at federally regulated worksites and picketing by federal unions at provincially regulated worksites.

> 86 In concluding its review of the constitutional jurisdiction over picketing the panel in Chevron, indicated its view that the jurisdiction over picketing of federal undertakings may very well be a concurrent jurisdiction shared by Parliament and the provincial legislatures:
>
> Similarly, although the Labour Code may apply to regulate picketing crossing the provincial and federal spheres of labour relations insofar as that picketing has a provincial aspect, another body of law, either statutory or common law, may apply at the same time to regulate the same picketing insofar as it has a federal aspect. . . . The result is that, because the picketing has a federal aspect, a body of law outside the Labour Code may be applicable to regulate certain aspects of the picketing which, from a provincial perspective, is also subject to regulation by the Labour Code. (p. 327)
>
> *Bay (The) v. U.S.W.A., Local 898,* 199526 C.L.R.B.R. (2d) 161 (the Bay)

10. The BC *Labour Relations Code* was drafted in 1973 and revised in 1987 with the knowledge that common law picketing or actions under the *Canada Labour Code* would affect provincial employers. The Board and Courts have understood that federal disputes can impact provincial employers and that the BC Labour Relations Board may not be able to take steps to restrict or prevent that, as in the case of hot declarations.

> 26 I conclude that "hot declarations" are not unlawful per se at common law, quite apart from such practices as may have been established under the Labour Code. This is not to say that they may not be used in an unlawful manner, as where their implementation involves breach of a current collective agreement or is aimed primarily at injuring a third party. Such conduct, however, is not alleged here.

> *Pacific Western Airlines Ltd. v. B.C.F.L.*1986 CarswellBC 275, [1986] B.C.W.L.D. 928, [1986] B.C.J. No. 97, 26 D.L.R. (4th) 87, 70 B.C.L.R. 108
>
> A consideration of ss. 31, 32 and 90, in the context of the Act as a whole and with proper regard to the intent of the legislation as it has been construed by the Court of Appeal in that decision, compels me to the view that a "hot declaration", or embargo order, made against a provincially regulated employer at the request and in support of a federally certified trade union involved in a strike falling under federal jurisdiction - like picketing by a federally certified union of a provincially regulated employer for the same purpose - falls outside the jurisdiction of the provincial board as defined and limited by the provincial Code. (pp. 314-5, emphasis added)
>
> *Victoria Times Colonist Group Inc. v. C.E.P., Local 25-G,* 2005 CarswellBC 3219, [2006] B.C.W.L.D. 1883, 116 C.L.R.B.R. (2d) 45

11. The Labour Relations Board does not regulate hot declarations made by federal unions, but it deals with the effect of that activity under the BC *Labour Relations Code* to determine if a union is on strike because it honours a hot declaration.

> Thus even where a union does not obtain, through collective bargaining, the right to observe a picket line, the Legislature has determined that employees who refuse to work behind a legal picket line do not thus engage in conduct which will be regulated by the Board as an illegal strike. The existence of these provisions does not give rise to the inference that parties no longer may define what "work" can be legally required of its employees by an employer in the collective agreement.
>
> *Pacific Press Ltd. v. Vancouver-New Westminster Newspaper Guild, Local 115,* 1985 CarswellBC 3912, [1985] B.C.L.R.B.D. No. 140, at paras. 35 and 67

12. The BC *Labour Relations Code* was amended in 1987 to restrict the allowable target of picketing under the BC *Labour Relations Code* from “employers” (which previously included federal employers) to “persons” (which excludes federal employers) .

13. The background for this change was explained in *BC Ferries*, a 1981 Court of Appeal case in which a federal union set up picket lines at the sites of two provincial worksites, with the result that the provincial workers honoured the federal picket line:

> 1. During the course of the strike T.W.U. members picketed at the places of business of British Columbia Ferries Corporation (B.C. Ferries) and Fording Coal Limited (Fording Coal) which are undertakings within provincial legislative jurisdiction. In B.C. Ferries [16 B.C.L.R. 160, [1980] 2 W.W.R. 1, 105 D.L.R. (3d) 360], T.W.U. members, assuming that B.C. Tel. supervisors had repaired two pay telephones

> located at the Departure Bay Ferry Terminal, picketed the terminal. Employees of B.C. Ferries refused to cross the picket line. As a result, the ferry workers did not work and several ferry sailings were cancelled. In Fording Coal, T.W.U. members assumed that B.C. Tel. supervisors had done work at the Fording Coal property. They picketed a log bridge at the point of the only access road to the Fording Coal property. A substantial number of Fording Coal's employees refused to cross the picket line and refused to work.
>
> 2. B.C. Ferries and Fording Coal brought actions for damages in the Supreme Court of British Columbia, alleging that the picketing was unlawful, that it was carried out in pursuance of an unlawful conspiracy, and that it constituted unlawful interference with the contractual relations of the plaintiffs and their employees.
>
> *BC Ferry Corp. v. T.W.U.,1981* CarswellBC 265, 31 B.C.L.R. 247 (BC Ferries).

14. At issue on appeal was whether the BC Supreme Court should assume jurisdiction over the picketing based on the common law, or defer to the BC Labour Relations Board. The Court of Appeal found this raised two issues:

> 1) Does the province have jurisdiction to legislate in respect of picketing at a provincial undertaking where the picketing emanates from a federal labour dispute?
>
> 2) If the province has jurisdiction to legislate in respect of such picketing, has it exercised that jurisdiction under the provisions of the Labour Code.
>
> In view of the conclusion I have reached regarding the second point, it is unnecessary to decide the first point. I will assume, without deciding, that the province has legislative competence in the circumstances. However, I have concluded that it has not exercised its jurisdiction in enacting the Labour Code
>
> *BC Ferries*, at paras 5-7.

15. The BC Court of Appeal decision was summarized by the LRB in the Bay decision:

> 90 In concurring reasons, Craig J.A. (Hutcheon J.A. concurring) ruled that the provincial legislature is competent to enact legislation in respect of picketing of a provincial undertaking where the picketing emanates from a federal labour dispute but that the province had not exercised this power in the Labour Code.
>
> *Bay, supra*, at para 90.

16. There is no doubt that the legislature has the jurisdiction to decide that unions and employers under the BC *Labour Relations Cod*e are allowed to recognize picket lines that unions in the federal jurisdiction establish.

17. The ILWU believes that where a union and an employer have agreed in their collective agreement to provide employees the right to refuse to cross a picket line, as in the case of ILWU bargained collective agreement, that there is no principled basis to refuse to allow the parties to keep that bargain simply because the labour dispute started federally.

18. The importance of allowing unions to honour their commitment of solidarity to other unions through picket line recognition clauses engages the fundamental freedoms of expression and association.

19. The consequence of forcing employees to ignore a picket line because it is started federally and risk legal action if an employer attempts to force employees to cross a federal picket line to return to work is to create a huge moral conflict in many workers.

20. The consequence of allowing employees to recognise a picket line that started federally is that the employer and workers honour the language that they agreed to when negotiating a recognition clause and labour peace is maintained with some employer inconvenience.

Respectfully submitted,

ILWU Canada

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iuoe
LOCAL 115

March 21, 2024

VIA EMAIL: lrcreview@gov.bc.ca

Sandra Banister, K.C., Michael Fleming, Lindsie Thomson
Labour Relations Code Review Panel

RE: LABOUR RELATIONS CODE REVIEW SUBMISSION

Dear Sirs/Mesdames,

Please accept this letter as the submission of the International Union of Operating Engineers, Local 115 regarding the changes to the Code we believe are necessary in order to properly reflect the needs and interests of workers and employers in the context of our modern economic realities.

The Operating Engineers will attend at the Vancouver in-person meeting and would like to make an oral presentation to the Panel.

The International Union of Operating Engineers, Local 115 has approximately 14,000 members. We are a recognized craft union representing members operating and repairing equipment throughout the different sectors of the construction industry. We also represent members employed in several other industries including waste management, mining and aviation.

The Operating Engineers support and endorse the recommendations proposed by the British Columbia Federation of Labour. Rather than repeat those recommendations, we will focus our submission on the construction industry.

The construction industry is an important part of the Provincial economy. It directly employs over 200,000 workers in British Columbia and accounts for approximately 10% of the Province's GDP. As the Provincial Government states on its website:

> "The construction industry has a major impact on the growth and strength of the province. This industry has literally built B.C. – everything from homes and office buildings, to roads and bridges. Every project is a tribute to the skilled workers who built it."[1]

[1] https://www2.gov.bc.ca/gov/content/industry/construction-industry

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There have been many inquiries and commissions which have addressed construction labour relations and they all confirm that the construction industry presents unique labour relations challenges and that to ensure that construction workers have access to meaningful collective bargaining, there is a need for construction specific labour relations legislation[2].

Every province in Canada has unique provisions in their labour relations legislation to deal with the construction industry. All provinces except British Columbia have construction specific labour relations legislation that is designed to facilitate access to collective bargaining. British Columbia – and only British Columbia - has construction specific labour relations provisions that are designed to restrict the rights of construction unions and which restrict access to collective bargaining.

The Operating Engineers respectfully submit that it is time for the Province to fall into line with the Canadian norm and enact construction labour relations provisions which ensure that construction workers have meaningful access to collective bargaining.

The need for construction specific legislation – and the reason that every province in Canada has construction specific labour relations legislation - flows from the unique aspects of the construction industry including:

- Project-Based nature: Construction projects are typically temporary endeavors with specific start and end dates. Each project is unique in terms of design, location, requirements, and stakeholders involved. Employees are often hired to work on specific projects and are laid off at the conclusion of the project (or the conclusion of their Employer's work on the project).
- Seasonality and weather dependency: Weather conditions can significantly impact construction activities and seasonal variations can also affect the demand for construction services in certain regions. Many construction workers experience periods of unemployment during the winter.
- Low barriers to entry: Construction employers range in size from small businesses with little capital investment to large multi-national companies
- Mobility of Capital: Construction equipment is inherently portable as it is designed to move between projects. This allows construction employers to easily shift some or all of their capital assets out of the Province.
- Alternative "unions": There are many alternative "unions" which continue to secure bargaining rights in the construction industry. Often, these "unions" do not have the support of the

[2] 1962 Report of the Royal Commission on Labour-Management Relations in the Construction Industry (the Goldenberg Report)
1968 Construction Labour Relations series of studies sponsored by Canadian Construction Association.
1976 Kinnard Commission "Special Commission of Inquiry into British Columbia Construction"
1993 report of the Baigent, Ready, Roper Committee: "Recommendations for Labour Law Reform"
1996 First Interim Report of the Kelleher and Ready Construction Industry Review Panel
1997 report of the Lanyon, Kelleher Construction Industry Review Panel: "Looking to the Future"
2012 An Interim Report regarding a Section 41 Inquiry into Labour Relations in the BC Building Trades Sector of the Construction Industry (Mike Fleming)

workers working under their agreements and do little more than prevent affiliated unions from securing bargaining rights.[3]

- Economic sensitivity: The construction industry is sensitive to economic fluctuations, as it is closely tied to factors such as GDP growth, interest rates, and investment levels. Economic downturns can lead to reduced construction activity, while periods of economic growth can spur increased construction demand.

The unique aspects of the construction industry make it very difficult for workers to exercise their right to unionize. Well before a union is able to secure a first collective agreement most construction projects end or are suspended for the winter and the workers are laid off with no right of recall. If a Union is somehow able to secure a Collective Agreement a small Employer can simply sell their equipment and leave the industry while a large Employer can focus on bidding work in other jurisdictions. These and other problems were recognized by the Construction Industry Review Panel in 1997, the last time there was a comprehensive review of construction industry labour relations in British Columbia[4]. In that review, the Panel reached a number of conclusions including finding that "the construction industry is unique in several important respects, and requires separate labour relations legislation as in the nine other provinces."

The Construction Industry Review Panel's recommendations included:

• a separate part be added to the labour relations code regarding labour relations for the construction industry, as other jurisdictions have done;

• for purposes of collective bargaining in Industrial/Commercial/Institutional (ICI) construction for craft bargaining units, the bargaining council for building trades unions should represent all these units in bargaining and similarly, the Construction Labour Relations Association should represent all employers who have a bargaining relationship with these units;

• any ICI employer newly organized by craft bargaining units would automatically be covered by standard negotiated agreements for ICI construction work, except that provisions must be made to accommodate projects bid on before certification;

The Provincial Government accepted the recommendations of the Construction Industry Review Panel and in July 1998 it passed Bill 26 which enacted Part 4.1 of the Code. Part 4.1 of the Code created a modified form of sectoral bargaining in ICI construction.

Part 4.1 of the Code as it then was, brought British Columbia into line with other provinces that address the unique aspects of the construction industry through construction specific labour relations legislation designed to facilitate access to collective bargaining.

But it was short lived.

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[3] First Interim Report to the Honourable Dan Miller Minister of Skills, Training and Labour by The Construction Industry Review Panel, Stephen Kelleher, QC & Vincent L. Ready, February 7, 1996

[4] Looking to the Future: Taking Construction Labour Relations into the 21st Century Report of the Construction Industry Review Panel, Stephen Kelleher, QC & Stan Lanyon, QC, February 25, 1998

When the Liberals won the 2001 Provincial election they repealed Part 4.1 of the Code leaving nothing in the Code to facilitate access to collective bargaining for construction workers. Instead, the Liberal government enacted Section 41.1 of the Code which provides (in part):

> 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.

Section 41.1 of the Code was intentionally designed to weaken building trade unions. It is an expressly a-symmetrical provision that requires building trade unions to bargain through the Bargaining Council with any employer that chooses to join the Construction Labour Relations Association. By contrast, membership in the Construction Labour Relations Association is voluntary for Employers.

Rather than facilitate access to collective bargaining, Section 41.1 forced building trade unions to bargain through the Bargaining Council which was created under the Social Credit government in the late 1970s and early 1980s. It was an important part of a wildly successful plan to de-unionize the construction industry and disenfranchise construction workers.

Re-enact Part 4.1 of the Code or repeal Section 41.1

The Operating Engineers propose that Part 4.1 of the Code as it was before the Skills Development and Labour Statutes Amendment Act, 2001, be revived. This would bring British Columbia back into line with other provinces that seek to facilitate access to collective bargaining for construction workers.

Part 4.1 of the Code flowed from the 1997 recommendations of the Lanyon and Kelleher Construction Industry Review Panel: "Looking to the Future". This was the last time there was a review of construction industry labour relations in the Province. Part 4.1 was a balanced provision which protected the needs of construction industry employers and promoted access to collective bargaining by creating a limited form of sectoral bargaining in the construction industry.

If the Panel is not prepared to recommend the reenactment of Part 4.1, the Operating Engineers propose in the alternative that Section 41.1 of the Code be removed from the Code. Removing Section 41.1 of the Code would not provide the positive legislative support needed by construction workers but it would at least bring balance to the Code by making membership in the Bargaining Council voluntary as is membership in the CLRA[5]. It would eliminate the requirement that building

[5] *Bargaining Council of British Columbia Building Trades Unions and Construction Labour Relations Association,* BCLRB Letter Decision No. B115/2002 where a Panel of the Board after a brief analysis concluded: "We find that mandatory membership in the Bargaining Council is directed by statute." While the Board in *International*

trade unions belong to a council of trade unions which is inefficient, anachronistic and designed to restrict the rights of building trade unions and their members.

The Bargaining Council was created in the late 1970s when the construction industry was very different than it is today. At that time, almost all ICI construction was performed by members of the Building Trades Unions. In the late 1970s, the business community felt that building trade unions and their members had too much power and the Bargaining Council was designed to limit that power[6]. The creation of the Bargaining Council along with a number of other anti-union enactments in the 1980s were devastatingly effective and building trade unions and their members no longer perform most ICI construction.

The Bargaining Council was initially designed to have a strictly limited role. The Council would negotiate collective agreements but the individual building trade unions would administer those agreements (in other words, the Council was designed to prohibit building trade unions from negotiating their own collective agreements in ICI construction but still allowed them to administer their own agreements). As the Board stated in *Mawson Gage Associates Ltd.*, BCLRB No. 307/86 (Upheld on Reconsideration BCLRB No. 115/87):

> The Board ... was however careful to limit the role of the Bargaining Council to bargaining and matters necessarily incidental thereto, such as bargaining strategy, the manner in which strikes and picketing are conducted, and ratification. At the same time, the Board was mindful of the need to prevent the Council from impinging upon the ongoing relationship between the individual building trades union and their members.

In *Certain Employees of Victoria Glass Company v. I.U.P.A.T. Glaziers, Architectural Metal Mechanics and Glassworkers Union, Local 1527*, BCLRB No. B289/2005 the Panel confirmed the limited role of the Bargaining Council:

> Consequently, employees of CLRA employers continue to be part of a "hybrid" bargaining unit structure. For collective bargaining purposes including strikes, lockouts, picketing and ratification decisions they are part of a large bargaining unit encompassing all employees of all CLRA employers. This large bargaining unit also must provide ample opportunity for individual craft unions and the contractors who employ their members to bargain about trade items. At the same time, employees are, for other purposes such as benefit administration, dispatch to a job and processing a grievance, represented by their craft union in a single employer bargaining unit.

Recently, some building trade unions have tried to address the problems associated with the Council by seeking to expand the role of the Council. The Council, with the support of some affiliates, has argued that it's authority is not limited to negotiating Collective Agreements but that

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Association of Heat and Frost Insulators and Allied Workers, Local No 118 v Construction Labour Relations Association of British Columbia, BCLRB No. B121/2014 may have implied that this decision was made in error, (an opinion with which the International Union of Operating Engineers, Local 115 would agree), no Union has yet been allowed by the Board to leave the Council.

[6] An Inquiry into the Structure of Bargaining by Building Trades Unions with Construction Labour Relations Association of B.C., BCLRB L129/82.

it is also authorized to administer those agreements. See for example *Fluor Constructors Canada Ltd V. Bargaining Council of BC Building Trades Unions (Travel Compensation Grievance),* [2022] BCCAAA No 105.

Several trades including the Operating Engineers, have been reluctant to endorse this solution to the problems associated with the Council. For many in the building trades, the mandatory nature of membership in the Council makes the notion of expanding its role untenable. An expanded role for a voluntary Council would involve very different considerations however.

The retention of Section 41 not only perpetuates an intentionally imbalanced system which undermines one of the core purposes of the Code[7] but it also perpetuates a dysfunctional system of bargaining.

Ten years ago when Chair Fleming drafted his Interim Report regarding a Section 41 Inquiry into Labour Relations in the British Columbia Building Trades Sector of the Construction Industry, he recognized the problems inherent in the Bargaining Council structure:

> 69 Viewed from the perspective of a reasonable outside observer, there can be little dispute the existing collective bargaining process involving CLR and the Bargaining Council raises very significant challenges. In particular, it does not produce timely bargaining outcomes, which would be of real benefit in terms of enhancing the competitive position of the building trades sector.

Since this report was drafted, various attempts have been made to tinker with the bargaining process but the structural dysfunction remains. While it no longer takes several years to negotiate each agreement the protracted processes are now compressed into a single year. In the most recent round of bargaining, the Bargaining Council held many days of meetings to prepare for bargaining and then main table bargaining took approximately 71 days[8]. Given the mandatory nature of the Bargaining Council, every building trade union is effectively statutorily required to participate. Not only does this demand inordinate attention of the senior leadership of every union but this lengthy process effectively excludes the direct participation of bargaining unit employees. At the end of the day, the total hours spent collectively by the building trades is staggering.

Again, construction employers can choose to simply opt out of this process but Building Trade Unions currently can't.

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[7] Facilitating Access to Collective Bargaining – as former Labour Relations Board Chair Paul Weiler stated in his seminal book Reconcilable Differences: "There are two parts of a labour code which are central to the balance of power between union and employer. One is the use of the law to facilitate the growth of union representation of unorganized workers. The other is the use of the law to limit the exercise of union economic weapons (the strike and the picket line) once a collective bargaining relationship has become established. Obviously legal rules designed for the first objective (encouraging collective bargaining) help expanding unions at the expense of non-union employers. By contrast, legal rules designed for the second objective (reducing industrial conflict) hamper the established unions for the benefit of organized employers. Whatever the lawmaker chooses to do in either of these areas, it is exceedingly difficult to look neutral in doing it." (page 5)

[8] This contrasts with our ability to reach a trade level agreement with our industry employers after 7 days of trade level bargaining (making the total commitment to Bargaining Council bargaining 78 days).

For the Operating Engineers, while a large percentage of the Union's membership is employed in construction there are only around 5% of our members who work under CLRA Collective Agreements (many members employed in the construction industry work in infrastructure development including road building which is not subjected to the bargaining council process). The resources required to negotiate a Collective Agreement for this small group of members far exceeds what is reasonable and being forced to belong to and bargain with the bargaining council as it is currently structured is an unreasonable drain on union resources.

Raiding in Construction

The next three issues we address all deal with raiding in the construction industry. Currently, there is an annual raid window which is open in July and August each year. The need for a broader raid window in construction has been recognized by recent legislative changes that give effect to these provisions. There are many construction workers working under collective agreements between their employer and an alternative "union" who want to join the labour movement and belong to an affiliated union.

While the Legislative changes that have been enacted have assisted such workers, the Operating Engineers would like to see the following amendments to the construction raiding provisions:

- Expand Raid Window in construction to include September.
- Allow craft unions to raid out their craft from a wall-to-wall bargaining unit.
- A provision which allows Unions the ability to obtain an employee list before making a raid application.

Expand Raid Window in construction to include September.

The summer raid window in construction provided certainty as to when the raid window is open and ensures that a representative group of construction workers is actually employed during the raid window. July and August are busy months in the construction industry but so is September. Many employers increase their complement of workers in September in order to complete projects before the fall. Increasing the window from 2 to 3 months and including September would allow construction workers employed under alternative "union" Collective Agreements more time to join the labour movement.

Allows craft unions to raid out their craft from a wall-to-wall bargaining unit.

Craft Unionism is premised on the ability of a group of workers with a strong and unique community of interest (workers who share similar training and skills) to bargaining together with the various employers who employ them. For this system to operate as intended, a Union must be able to represent most or all of the members of its craft.

The Labour Relations Board has recognized the importance of this traditional form of craft unionism in construction:

> ... In labour relations, construction is one of the more distinct or unique industries. Projects operate for a set duration, on a temporary work site. Hiring halls are the mechanism through which employees are dispatched to work. There can be many employers on site in the form of subcontractors, each with its own work force. There are unique union security provisions such as non-affiliation clauses that provide for the possibility of legal mid-contract work stoppages. The enduring relationship is not between one employer and an employee but between an employee and the respective craft union to which the employee belongs.
>
> *R.M. Hardy, supra,* commented upon the nature of the industry and its impact on the traditional employment pattern. It noted the highly cyclical nature of employment in the construction industry. As a result, a contractor may retain only a nucleus of key employees, with the bulk of workers recruited as and when they are needed for a specific project. Employees are dispatched through the union hiring hall to the job site, with the trade union in effect performing a basic personnel function in the construction industry. Any one employee may be employed by a number of contractors in a number of areas in any one year. As a consequence, the primary and enduring relationship in construction is between craft unions and employees, not between employer and employee (see page 366).

When most or all of the members of a construction craft are able to work through their craft union, they are able to:

- advocate for safe working practices and regulations;
- provide initial and ongoing training as technologies change
- provide guidance and mentorship to young workers or people new to the craft;
- ensure that people dispatched to perform work within their craft are properly qualified to work safely; and
- provide pension and health and welfare benefits that carry on past any particular project.

In British Columbia we have a fragmented construction industry. Construction employees work through their craft union, for non-union employers or in wall-to-wall bargaining units.

In some segments of the construction industry, most work is performed by large integrated companies which often have wall to wall bargaining relationships. When a construction worker with an enduring connection to a trade union obtains employment with such an employer, their pension and health and welfare benefits are not maintained. These employees often have no real representation and the Labour Relations Board effectively bars craft unions from raiding their craft from an all employee bargaining unit[9]. This policy ignores the role played by craft unions in providing pension and health and welfare benefits and ignores the role played in training and advocating for safety standards in different sectors of the construction industry.

[9] *Cicuto & Sons Contractors Ltd.*, IRC No. C271/88 (Reconsideration of BCLRB No. 52/87), 1 C.L.R.B.R. (2d) 63 at page 103

The tower crane industry provides a vivid and timely example. Historically, tower crane operators worked through the Operating Engineers. The Operating Engineers ensured that members were properly trained and competent to perform the work that they were dispatched to perform.

Now, most tower crane work is performed by large integrated employers most of which have wall to wall bargaining relationships and, the operators working for these employers are not able to choose to enjoy the benefits of working through their craft union. It follows that the Union cannot ensure that members dispatched to operate tower cranes are properly qualified.

Allowing building trade unions to raid out their craft from a wall to wall bargaining unit would rectify this problem and would allow craft construction workers to enjoy the benefits of effective trade union representation.

A provision which allows Unions the ability to obtain an employee list upon establishment of a base of support.

The Operating Engineers submit that a provision in the Code allows a union to obtain an employee list upon the establishment of a base of support and would facilitate access to meaningful collective bargaining for construction employees (and other employees).

This provision would be particularly important for raids. Under the Code, if a raid application is dismissed on its merits, there is a 22-month time bar imposed on further applications. The Operating Engineers have made a number of raid applications where – despite our best efforts – we failed to identify all of an employer's projects prior to making our application and our application would be dismissed because we failed to establish threshold support.

Savvy employers who have arranged a collective bargaining relationship with an alternative union seek to ensure that their employees only know about the construction project they are working on. Often employees don't know that their employer has another group or groups of employees working on other projects. When the Union applies to raid what appears to be a discrete group of workers, the employer then discloses its other workers and the workers who want to join the labour movement must wait another two years because the Union's application will be dismissed because they do not have support among the employees that they did not know worked for the employer.

Conclusion

The Operating Engineers would like to see Part 4.1 of the Code re-enacted. This part of the Code was first enacted following the most recent construction labour relations review and it provides a balanced approach to construction labour relations.

Alternatively, the Union requests that Section 41.1 of the Code be rescinded. This provision is intentionally imbalanced and is designed to undermine and restrict the rights of Building Trade Unions and their members.

Finally, the Operating Engineers request that the Panel recommend changes which would facilitate raids in the construction industry. Many construction workers are employed under collective agreements with alternative "unions" and would like an opportunity to join the labour movement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 115.

Brian Cochrane, Business Manager

Josh Towsley, Assistant Business Manager

BC/Jt/cb moveUP 2024 Labour Relations Code Review Submission cb

Submission to the 2024 Labour Relations Review Panel

Attenion to:
Sandra Banister, K.C.
Michael Fleming
Lindsie Thomson

LiUNA! Local 1611
BC & YUKON

About Us

LiUNA Local 1611 is B.C.'s Labourers' Union. We are headquartered in South Surrey with nine additional offices around the province. We also operate a growing training centre that delivers in-person and virtual programming to thousands of students per year, and we administer our own Pension and Health Benefit plans for our more than 10,000 members.

We maintain affiliations with the BC Building Trades Council, the BC Federation of Labour, the Canadian Labour Congress and our international union, the Laborers' International Union of North America, which has been active in British Columbia since 1937. The latter represents more than 100,000 workers in Canada and more than 400,000 workers in the U.S.

LiUNA Local 1611's membership is as diverse as BC's economy, representing more than 10,000 construction and service workers in British Columbia. Our members work in:

- construction
- roadbuilding
- pipeline
- paving
- utility
- traffic control
- rail
- mining
- tunnel & rock work
- diamond drilling
- industrial plant
- dock & shipyard
- health care
- security
- landscaping
- recycling
- parking enforcement
- cemetery and funeral services
- warehousing
- janitorial

Our Position

Employers continue to have an unfair advantage over workers and their bargaining agents, and LiUNA Local 1611 is calling on this panel to put forward meaningful recommendations to the Government that will respect the gains workers have achieved and support workers' chartered right to freely associate.

Unfortunately, there continues to be a barrier to unionizing in British Columbia that stems from a fear of reprisal from employers. Despite the improvements that have been made to the Code over the last few years, workers continue to be attacked by their employers; some workers have even lost their jobs as they worked towards a better future for themselves and those they care about.

The Unfair Labour Practices provisions in the Code have lost their intended effect. Companies welcome a slap on the wrist for a violation of the Code that will disrupt or eliminate a union organizing campaign. LiUNA, along with other unions, now only file ULP complaints as a last resort, as the delay in adjudication and the awards do not fix the damage caused to the organizing campaigns.

Workers' bargaining power is being undermined by the Employers' ability to operate both union and non-union divisions (double-breasting) along with unions' limitation to address-based certification, which requires them to negotiate provincial recognition over having the ability to organize towards it.

Since the last panel in 2018, the effect of the COVID-19 pandemic has rapidly increased the amount of remote work. Technological advancements have significantly changed the workplace in various ways, many of which are creating barriers to how workers were able to organize in the past. In the modern workplace, employees can no longer count timecards to determine how many employees there are or check the schedule, as they're now only seeing their scheduled hours. The Code must be updated to support workers' ability to initiate and lawfully participate in union certification drives.

Lastly, the continued unchecked growth of undemocratic and employer-dominated unions is eroding the hard-fought gains of the working people of British Columbia. They are using their employer-friendly relationship to access workers on paid time, along with misinformation to acquire revocation cards as a tool to block workers' ability to change representation.

We respectfully submit the following recommendations.

Honouring Workers' Bargaining Power

The Problem
The current legal framework forces unionized workers and their bargaining agents to negotiate provincial/geographical jurisdiction, and there is no way to achieve this through organizing. Even when workers are successful at unionizing 100 per cent of a company, their bargaining power is easily eroded by employers' ability to open new non-union locations (double-breasting).

Service Sector Workers are particularly vulnerable, as the opening of non-union locations can quickly erode their bargaining power. This is especially true when non-union working conditions mirror what unionized workers have achieved through collective bargaining without the cost of union dues.

Recommendation
In addition to address-based certification (Sections 18, 20, 21, 28 and 142), allow all trade unions to make certification applications on a geographical basis (regional districts/municipality or provincially).

For example, when a trade union is filing their certification application (Sections 18, 20, 21, 28 or 142) on a company, the appropriate bargaining unit description could be:

A) "All employees in the province of British Columbia"
B) "All employees in Vancouver, excluding supervisors"
C) "All warehouse employees in Kelowna, Kamloops and Vernon"

At the core of this recommendation is the idea that when 100% union density is achieved, it can not be eroded by the employers' ability to open new non-union locations. All new locations must automaticlay be unionized.

The above-noted solution addresses the power imbalance that companies hold over their employees. It brings fairness to the bargaining process by maintaining and respecting the 100 per cent union density acquired through workers' organizing efforts and helps reduce employer's ability to double-breast.

Access to Employee Lists

The Problem

The nature of work and workplaces in British Columbia is changing rapidly and many workplaces have undergone transformational change since the last Code review in 2018.

Employers continue to have complete control of information regarding who employees are, where and when they work, and how to communicate with them. Even in traditional workplaces, technological change, particularly in payroll and scheduling, has created new barriers for workers to identify and communicate with their colleagues. Workers must be provided with access to their colleagues if they are going to have any meaningful ability to freely associate and have a union in their workplace should they choose to do so.

Access to worksite lists is especially difficult in the construction industry, in cases where employees may work across many sites. Employers also have a history of manipulating lists to prevent certification thresholds from being reached.

Recommendation

Require employers to provide an employee list, containing work location, job title and all contact information in their possession, when a union makes an application and meets a threshold of 20 per cent support among members in a proposed bargaining unit.

It is worth noting that in 2016, Ontario's "Changing Workplaces Review" recognized the implications of new workplaces structures and the impact on workers' ability to communicate with each other about the conditions of their employment. That review recommended that employers be required to provide a list of employees where a union made an application and had obtained the support of 20 per cent of the workers in a proposed bargaining unit.

The sharing of this type of information is appropriate as union drives are not external or public processes. They are internal to the workplace and led by employees coming together to form or join a union to access the rights set out in the Code. Collecting names, employment location and personal contact information is a routine part of an organizing drive, and trade unions merely support workers in using this contact information.

Recommendation #3

Unfair Labour Practices - Meaningful Accountability Against Violators

The Problem

The Labour Code and standing practices do not allow for compensation for workers who have experienced a traumatic event caused by their employer during a union certification campaign.

When a Section 5 violation has occurred, particularly when an employee(s) has been terminated, the best outcome the victim can receive is a make-whole order and reinstatement. There is no compensation for the harm caused to the mental health of the employee(s) by their employer's violation of the Code. Furthermore, even if reinstatement is ordered, many victims decide not to return to work because of the realistic fear of continued misconduct by their employer.

Recommendation

Introduce damages for workers if an employer violates Section 5 or 6 of the Code, with an emphasis when the violation falls within the criteria found in Section 5.2 and an employee(s) has been “discharged, suspended, transferred or laid off from employment or otherwise disciplined in contravention of this Code.”

Unfair Labour Practices - Fixing a Broken System

The Problem

Companies have an unfair advantage as they can commit unfair labour practices with little consequence and huge benefits of disrupting or eliminating an organizing drive.

Furthermore, unions now only file unfair labour practice complaints as a last resort, as the remedies awarded are not worth the delay during the certification campaign. Some unions also do not have the financial means to pursue complaints.

As a result, Section 6 is failing workers and companies are getting away with unchecked violations of the Code.

Recommendation

Introduce time limits similar to what is found in Section 5(2) for all unfair labour practice complaints. To accomplish this, the panel may also wish to recommend increasing the Board funding so they can hire more staff to enforce this recommendation within their other responsibilities.

Improve Labour Relations Board Processes

The Problem
Years of underfunding have resulted in the dysfunction of the Board, and despite small operating increases over the past few years, the Board continues to face a shortfall in both operating and capital funding. Managing this through contingency funding does not allow for long-term planning.

The Board also needs more staff at every level – vice chairs, mediators and support staff. There are strict timeline requirements in the Act that must be met. When staff are pulled away to adhere to these requirements, other work is delayed. Staffing levels must be sufficient to meet emergent and ongoing needs. Delays in decisions impact workers, their bargaining agents and employers. These unacceptable delays in receiving decisions on critical workplace matters can only be addressed with additional staffing at the Board, which requires funding to achieve.

Recommendation
Provide a significant increase of at least $5 million to the operating funding for the Labour Relations Board. And provide the necessary capital funding to accommodate additional staff and meet technology requirements.

Ensure that the Board has sufficient personnel and resources to meet the timelines established in the Code, to ensure that procedures, services and that decisions are available within a reasonable timeframe. This should include a return to having members of the Board with expertise in construction to ensure that workers and employers in this industry are being treated appropriately.

The Board should undertake systemic improvements to modernize procedures with all stakeholders with the assistance of a newly formed tripartite committee (Labour Board, Union, Employer) that will have voice over changes and updates to the Labour Board's policies and procedures.

Expand Successorship Protection

The Problem

Despite improvements made to the Code in 2019, workers continue to be vulnerable in a number of sectors that are regularly subjected to the practice of contracting out, such as residential and long-term care in the health care system. We support the broadest possible extension of successor rights. Any work that is covered by a collective agreement should be protected by successor rights provisions. Amendments to the Code in 2019 provided extended successorship protections to workers in particular sectors:

(a) building cleaning services;
(b) security services;
(c) bus transportation services;
(d) food services;
(e) non-clinical services provided in the health sector.

Successor rights are a necessary protection for workers and their unions. The practices of contracting out, contract retendering and cancellation undermine the democratic rights of workers to join and remain in unions and undermine collective bargaining. In cases of contracting out, unions lose bargaining rights and negotiated agreements, and workers lose their jobs.

Successor rights help protect vulnerable workers and addresses Employer vs Worker power imbalance.

No employer should be able to outsource, re-tender or flip a contract to undermine the democratic rights of workers to unionization and collective bargaining. Workers must be equally protected in the transfer of work and in the sale of business regardless of the form taken.

The onus should be on employers to show successorship provisions do not apply, since they have access to pertinent information about the successorship or transfer of business. A similar requirement already exists in section 14(7) of the Code related to unfair labour practices.

Expand Successorship Protection (cont.)

Recommendation
Amend successorship provisions so that the certification follows a transfer of workers and work to reflect the modern realities of contracting, subcontracting, contract flipping and modern forms of corporate transfer. Place the primary evidentiary burden on the employer where a successorship or common employer application is filed.

We also suggest the Panel factors in the recommendation of the 2018 Code Review Panel, being that changes to the successorship language should be retroactive to the date of the Panel's Report to prevent contracts being cancelled to avoid the application of the extension of expanded successorship rights.

Furthermore, given that unions and workers do not have ready access to documentation required to establish successorships as this information is normally solely in the possession of employers and successorships can happen fairly quickly, we recommend that the Code be amended to place the evidentiary burden on employers, and require that they disclose all relevant documents, in cases where a successorship or common employer application is filed.

Strengthen Provisions Around Undemocratic and Employer-Dominated Unions

The Problem

Companies are undermining workers' bargaining power and chartered right to associate by colluding with undemocratic, employer-dominated unions that put the company's interests above their members.

Recommendation

Empower the Labour Relations Board to receive complaints, conduct investigations and audit internal election processes of unions that are alleged to be undemocratic and/or employer-dominated. If, upon investigation, the LRB finds substance to the complaints, the "union" would be ordered to repeal its undemocratic processes. Failure to do so should disqualify that organization from certification in the province.

Prevent Double Breasting

The Problem
The Code allows for the discretionary nature of common employer applications. In construction, double breasting inherently undermines a union's bargaining rights but it can be very difficult or impossible to prove to the Board's satisfaction that bargaining rights have been undermined.

Employers are currently able to manipulate existing certifications by re-organizing their corporate structure. Companies cannot be allowed to avoid their union certification by simply transferring their equipment to a new corporate entity and abandoning the old corporation. These corporate shuffles deny workers their right to free association in a democratic society.

Recommendation
Amend the Code to remove the discretionary nature of common employer applications in construction.

Manipulation of Revocation Cards

The Problem(s)

1. Employer-dominated, undemocratic unions are manipulating workers' ability to reconsider their support by engaging in revocation sign-up campaigns while employees are seeking a change in representation.

- LiUNA has received complaints of intimidation and misinformation being used by workers' current bargaining agents and their employers, who are pressuring them to sign revocation cards. Signed revocation cards are held until the evening of the day that a raid application is filed, impacting the applicant's threshold and preventing them from responding. This tactic is a violation of the spirit of this provision, of allowing workers the independent opportunity to reconsider their decision to support.

2. During union certification drives, employers are engaging in revocation sign-up campaigns while employees are being paid and on company property. Employees are particularly vulnerable during a union certification drive, as companies typically take swift action to prevent union certification and use the employer/employee power imbalance to their advantage.

3. There is an unfair higher standard for the acquisition of membership evidence (Section 7) vs. revocation of membership cards (Regulation: Section 4), that also needs to be addressed.

Manipulation of Revocation Cards (cont.)

Recommendation
Entirely remove employer and union participation in the collection and submission of revocation cards.

If the panel does not agree with the first recommendation and would like to allow the continued practice of unions' and employers' involvement in the collection and submission of revocation evidence, then we request that you consider correcting the inequality of how revocation evidence is acquired.

We suggest that Section 4 of the regulations be amended to the following:

A membership card may be revoked by "employees" delivering a written statement signed by the member to the trade union and the Labour Relations Board on or before the date of application for certification.

"An employer or trade union or person acting on either party's behalf must not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to revoke their support of a trade union."

Provincially Regulated Workers and Federally Regulated Picket Lines

The Problem

A 2022 reconsideration decision found that the refusal of poly party union members to cross the Canadian Merchant Services Guild's picket line at the Vancouver Shipyards amounted to an illegal strike. The workers were ordered back to work. The panel found that the current language in the definition of strike, "permitted under this code," was insufficient to protect provincial picketing as the LRB does not have jurisdiction over strikes established under another code - e.g. the Canada Labour Code.

Since that decision, the issue has arisen during several federal job actions where provincially regulated workers were directed to cross the picket lines. This caused significant confusion, frustration and disappointment amongst union members.

Recommendation

Amend the definition of strike to include picketing that is "not prohibited by" this Code. Therefore, we believe the most straightforward fix is to amend the definition as follows:

"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 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*~~ ***not prohibited by*** *this Code,*

and "to strike" has a similar meaning;

Freeze Period for First Collective Agreements

The Problem

A successful certification doesn't result in immediate improvements for workers; a first agreement is necessary. Negotiating a first agreement and doing so within a reasonable timeframe continues to be very difficult, especially in sectors with traditionally low density. Because the freeze period can end before a first agreement is reached, delays at the table are a tactical advantage for employers. Running out the timeclock gives employers a chance to change pay and working conditions to undermine negotiating efforts. It remains very difficult to achieve a first agreement without taking strike action resulting in more workplace disruptions.

Flowing from the 2018 panel's recommendations, the government made some improvements to the first agreement processes by providing the option of mediation prior to a strike vote and increasing the freeze period from four to 12 months. We welcomed both these changes, but we continue to experience significant challenges in getting first agreements due to intentionally long delays as employers try to run out the clock.

The freeze period in Section 45, which prohibits an employer from changing the terms and conditions of employment after certification for 12 months, continues to be the biggest barrier. A time-limited freeze period incentivizes employers to drag their heels in negotiations. Removing the time limit would encourage employers to quickly reach a negotiated agreement or trigger Section 55 at the end of the one-year period.

Recommendation

Amend section 45 of the Code to have the statutory freeze apply until a first collective agreement is reached by eliminating the time limit.

Conclusion

The BC Labour Relations Code needs to be updated to account for the rapidly changing labour environment and tactics employers are using to prevent or undermine their employees' collective action.

For the Code to continue to be relevant, all stakeholders must believe in it. This is something that is hard to do, with the erosion of the Unfair Labour Practice provisions, along with British Columbian workers' inability to preserve their hard-fought bargaining power achieved when they successfully organize to 100 per cent union density within their workplace.

A broad array of reforms, set out in this submission, is therefore necessary to redress the inadequacies of the Code and bring it in line with the realities of modern employment relations.

LiUNA! Local 1611
BC & YUKON

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THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

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March 22, 2024

Via Email: lrcreview@gov.bc.ca

Ministry of Labour
PO Box 9064 Stn Prov Govt
Victoria, BC V8W 0E2

Attention: Sandra Banister, K.C., Michael Fleming, and Lindsie Thomas, Labour Relations Code Review Panel

Regarding: Maa-nulth First Nations – *Labour Relations Code* Review

I write as President of the Maa-nulth Treaty Society, on behalf of Huu-ay-aht First Nations, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe and the Yuułu?ił?ath Government, collectively known as the Maa-nulth First Nations ("Maa-nulth"), in response to a letter from Sandra Banister, K.C., Michael Fleming, and Lindsie Thomas dated February 2, 2024 regarding the initiation of the *Labour Relations Code* review.

As self-governing Treaty nations, Maa-nulth need to be engaged with respect to potential legislative changes and appreciate the opportunity to comment on this proposal. Based on the information provided, Maa-nulth have no comments and do not wish to engage further regarding this proposal at this time.

Please note that this response does not preclude any of Huu-ay-aht First Nations, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe or the Yuułu?ił?ath Government from seeking to engage bilaterally in the future regarding the impact of the proposal on its interests.

If you have any questions regarding this letter, please contact Mark Stephens, the CAO of the Maa-nulth Treaty Society, at cao@maanulth.ca or (250) 228-2820.

Yours truly,

Wilfred Cootes, President
Maa-nulth Treaty Society and on behalf of the Maa-nulth First Nations

cc: Brad Johnson, Huu-ay-aht First Nations
Kevin Mack, Toquaht Nation
Charles McCarthy, Yuułuʔiłʔath Government
Wilfred Cootes, Uchucklesaht Tribe
Ben Gillette, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations

migrant workers centre

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Telephone: 604.669.4482 Fax: 604.669.6456
Email: jon@mwcbc.ca Website: www.mwcbc.ca

March 21, 2024

Attention: Sandra Banister, K.C., Michael Fleming, and Lindsie Thomson
Labour Relations Code Review Panel
lrcreview@gov.bc.ca

Dear Panel:

Re: BC *Labour Relations Code* Review

In response to the Panel's invitation for input from stakeholders regarding the review of the *Labour Relations Code* (the "*Code*"), the Migrant Workers Centre (MWC) makes the following submission.

Background

The Migrant Workers Centre is a non-profit organization that was founded in 1986. MWC works to promote and advance access to justice for Migrant Workers by providing legal services, advocacy, research, public education and engaging in law and policy reform initiatives. We define "Migrant Workers" as workers with precarious immigration status including those who do not have Canadian citizenship and permanent residency. MWC provides support to Migrant Workers who are especially vulnerable to employment exploitation and labour trafficking.

The majority of MWC's clients are care workers in BC under various care work programs. There are three streams to which care workers can enter and work in Canada. The first two streams are the Home Child Care Provider Pilot and the Home Support Worker Pilot, which provide a path to permanent residency for care workers entering Canada. However, it is important to note that both pilots were launched in 2019 and are set to expire on June 17, 2024. The Federal Government has not indicated if it will extend the program, and there are many care workers who are still waiting for their permanent residency applications to be processed. Precarious immigration status further increases migrant workers' vulnerabilities.

The third stream for care workers, which is currently only available to individuals who are already in Canada, is to apply to work through the Temporary Foreign Worker Program (TFWP). This program ties the Migrant Worker to a specific employer, job, and location as part of the conditions of their work permit. If the Migrant Worker violates conditions of their work permit, they can become inadmissible to Canada and removed from the country. Migrant Workers are therefore at an extreme power imbalance in relation to their employer, as they depend on their employers for livelihood and their ability to remain in Canada. These conditions make it extremely challenging for workers to negotiate for better working conditions, enforce their rights, and leave exploitative employment. This often leads to widespread and systemic

violations of minimum labour standards, employment contracts, occupational health and safety regulations, and human rights.

There is an urgent need to protect the most vulnerable workers of Canadian society now. As the UN Human Rights Commission's Special Rapporteur on contemporary forms of slavery, Professor Tomoya Obokata, noted in in his report issued on September 6, 2023[1].:

- Certain categories of migrant workers are made vulnerable to contemporary forms of slavery in Canada by the policies that regulate their immigration status, employment and housing in Canada, and the workforce is disproportionately racialized;[2]
- Agricultural and low-wage streams of the TFWP constitute a breeding ground for contemporary forms of slavery;[3]
- Migrant workers who quit their jobs are prohibited from working until they can find a new employer to undertake a labour market impact assessment on their behalf which is a long process, and this means they would also be denied access to most social services for persons without employment because of their temporary status;[4] and
- Migrant workers are vulnerable to exploitation and abuse because many feel they are unable to report their employers for fear of losing their migration status, employment and/or housing (for those workers who are required to live in employer-provided accommodations).[5]

MWC proposes that one way to advance the protection of Migrant Workers, and specifically, migrant care workers, is to provide them with access to collective bargaining through the *Code.*

Summary of Submission

MWC adopts its previous recommendations submitted to the 2018 review of the *Code*, which proposed that additions be made to the *Code* that will include a system of broader based collective bargaining that would provide meaningful access to collective bargaining for care workers in British Columbia. We have attached MWC's previous submission (Appendix "A"), and we invite the Panel to review paragraphs 21 - 46 in particular. These paragraphs outline the need for sectoral bargaining to address the vulnerabilities in the working lives of care workers and recommends a way forward to facilitate broader based bargaining for migrant care workers.

If the panel deems our recommendation is beyond its scope, then we implore you, at the very least, to recommend to the Minister of Labour to appoint a committee of special advisors pursuant to subsections 3(1)(b) and (c) of the *Code* to specifically examine the narrow issue of broader based bargaining through sectoral certification in the care work industry and make recommendations as to possible amendments to the *Code* that would extend meaningful access to collective bargaining for care workers.

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[1] Tomoya Obokata, End of Mission Statement, September 6, 2023, https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf

[2] *Ibid*., p. 3

[3] *Ibid*., p. 3

[4] *Ibid.,* p. 4

[5] *Ibid.*¸ p. 4

In addition, MWC would like to attend the public hearing in Surrey on May 6, 2024, and we would like to make oral submissions so that the Panel can hear from our members, many of whom are migrant care workers with lived experience, about the urgent need to extend the protections of the *Code* to care workers.

We thank you for the opportunity to provide input on this important process, and we look forward to continuing this discussion at the public hearing.

Sincerely,
Migrant Workers Centre
PER:

Jonathon Braun
Legal Director

Angela Wong
MWC Advocacy Committee

Appendix "A"

Migrant Workers Centre Submission to the Section 3 Panel Reviewing the British Columbia Labour Relations Code

March 2018

Migrant Workers Centre
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On February 6, 2018, the Minister of Labour appointed a three-member panel as a Labour Relations Code Review Panel (the "**Panel**") under Section 3 of the *Labour Relations Code* (the "*Code*"), with a broad mandate to review the *Code*.

In response to the Panel's invitation for input from stakeholders, the Migrant Workers Centre ("**MWC**") makes the following submission.

Summary of Submission

The MWC proposes that additions be made to the *Code* a system of broader based collective bargaining that would provide meaningful access to collective bargaining for migrant caregivers in British Columbia. The proposed system of broader based bargaining is patterned on the system utilized the publicly funded health and community social services sector. Generally, this system involves statutorily defined bargaining units, multiple employers represented by a single employer association and association of unions that are governed by articles of association. A similar system should be implemented in the caregiving sector in order to facilitate access to meaningful collective bargaining for migrant caregivers.

About the Migrant Workers Centre[1]

1. MWC, formerly West Coast Domestic Workers Association, is a non-profit organization dedicated to legal advocacy for caregivers and other migrant workers in BC. Established in 1986, MWC facilitates access to justice for migrant workers through the provision of legal information, advice and representation. MWC also works to advance the labour and human rights of migrant workers through public legal education and training, law and policy reform work and test case litigation.

2. The majority of MWC's clients are caregivers working in BC under the Caregiver Program. MWC also serves migrant workers working under the low-wage stream of the Temporary Foreign Worker Program (TFWP) in jobs in the service, hospitality, agriculture, construction and manufacturing industries, as well as under the Seasonal Agricultural Workers Program (SAWP).

3. MWC regularly partners with community organizations to deliver public legal education workshops and mobile clinics to migrant workers in the TFWP, CP and SAWP in communities around the province with limited access to services. Through this work, MWC has identified numerous gaps in the statutory regulation of employment that negatively impact these often isolated and vulnerable workers.

[1] The description of the MWC is taken nearly in full from the MWC's March 2018 report titled "*Envisioning Justice for Migrant Workers: A Legal Needs Assessment*" which was authored by Alexandra Rogers. See page 1.

[2] In the first 3 quarters of 2017 (January 1, 2017 – September 30, 2017), for example, Employment and Social Development Canada approved 1,149 positions for home child care providers and 317 positions for home support

Profile of Caregivers in British Columbia

4. The Caregiver Program is part of the Federal Government's Temporary Foreign Worker Program (the "**TFWP**").[2] The TFWP permits Canadian employers to hire foreign nationals to perform work, including caregiving work, in Canada.

5. The Caregiver Program has two streams: (1) caregivers for children under 18 years of age; and (2) caregivers for people with high medical needs, including persons over age 65 or people with disabilities and chronic or terminal illness.[3] The work takes place in private residence and often includes housekeeping and cleaning work.

6. Caregiving work is valuable work and helps British Columbia thrive, as it is the work that makes other work possible. Paid domestic work benefits families, employers, and the economy as a whole. With Canada's aging population and increasing life expectancies, the need for domestic workers will continue to grow.

7. The Caregiver Program used to be called the "Live-In Caregiver Program". However, in November 2014, Citizenship and Immigration Canada (now "Immigration, Refugees and Citizenship Canada" or IRCC) eliminated the live-in requirement. Despite these changes, employers continue to impose live-in arrangements.

8. Ontario recently engaged in an expansive review of its *Employment Standards Act* and *Labour Relations Act* culminating in Bill 148 - *Fair Workplaces, Better Jobs Act, 2017*. The review entitled the "Changing Workplaces Review" was led by Special Advisors, C. Michael Mitchell and John C. Murray.[4] A number of submissions focussed on Bill 148 and the Changing Workplaces Review focused on the situation of caregivers in Ontario.[5]

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[2] In the first 3 quarters of 2017 (January 1, 2017 – September 30, 2017), for example, Employment and Social Development Canada approved 1,149 positions for home child care providers and 317 positions for home support workers in British Columbia under the Temporary Foreign Worker Program. See Employment and Social Development Canada, *Temporary Foreign Worker Program 2017 Q3* at <http://open.canada.ca/data/en/dataset/e8745429-21e7-4a73-b3f5-90a779b78d1e?_ga=2.24247994.1239877317.1512578766-536812370.1481074597>

[3] IRCC: https://www.canada.ca/en/employment-social-development/services/foreign-workers/caregiver.html

[4] C. Michael Mitchell and John C. Murray, *The Changing Workplaces Review – Final Report* (May 2017 (the "**Ontario Review**"). See pages 286-288 for the Special Advisors' review of the situation of domestic workers employed in the home. < https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf>

[5] See for example: (1) Caregivers' Action Centre, *Submission by the Caregivers' Action Centre: Ontario's Changing Workplaces Review Consultation Process* (September 18, 2015) and (2) Workers' Action Centre and Parkdale Community Legal Services, *Phase 1 Review of ESA and LRA Exemptions* (December 7, 2017).

9. The comments of the Migrant Worker Alliance for Change and the Caregivers' Action Centre describing the context of migrant caregiving labour are relevant to this Panel's deliberations because they are equally applicable to migrant caregiving in British Columbia.[6] Please see Appendix "A" to this Submission for an excerpt of these comments.

10. As is the case in Ontario, migrant caregivers in British Columbia are women of colour from developing nations. They face marginalization and vulnerability as workers because of multiple employment and social insecurities: the temporary nature of their immigration status, work visas that are tied to a single employer, low-wage precarious jobs, language barriers, geographic isolation, family separation, and a lack of familiarity with their rights and obligations under Canadian law. As a result, they are particularly vulnerable to labour exploitation and discrimination based on gender, class, race, and nationality.

The Importance of Access to Collective Bargaining

11. Access to collective bargaining remains a fundamental purpose of the *Code*: section 2(c) of the *Code*. The BC Labour Relations Board's leading decision on certification sets this out when it describes the history and purpose of certification:

> Simply put, an employee, in the absence of a collective agreement, has no vested rights. The ability of an employee to not simply accept what is offered but to be able to bargain what he or she considers to be desirable in order to provide protection from material and legal insecurity, directly results in that employee having greater rights, voice and dignity (see Paul Weiler in Reconcilable Differences, (Toronto: Carswell Company Limited, 1980, pp. 15-33).
>
> Finally, a collective bargaining relationship that achieves a greater balancing of the power between employers and employees, that vests employment rights in employees, that allows decisions to be challenged and disagreements to be [7]settled by neutral arbitrators, without economic disruptions, establishes the rule of law in employer-employee relationships.
>
> This, as Weiler notes, is "...intrinsically valuable as an exercise in self-government" (p. 33).[8]

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[6] Migrant Worker Alliance for Change and the Caregivers' Action Centre, *Stronger Together: Delivering on the Constitutionally Protected Right to Unionize for Migrant Workers, Bill 148 Submissions on Broader Based Bargaining* (July 21, 2017) <http://www.migrantworkersalliance.org/wp-content/uploads/2017/07/MWAC-and-CAC-Bill-148-Broader-Based-Bargaining-Submissions-21-July-2017.pdf> (the "**MWAC/CAC Submission**)

[7] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 58.

[8] *Island Medical Laboratories*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93) ("***IML***")at p. 8-10.

12. Since the Board's decision in *IML*, the Supreme Court of Canada issued a new labour trilogy constitutionalizing the right to join a union, the right to collective bargaining and the right to strike under section 2(d) of the *Canadian Charter of Rights and Freedoms*. The decisions underpinning the new labour trilogy all speak to the importance of meaningful access to collective bargaining as an exercise of the fundamental freedom of association.

13. The freedom of association is the means by which vulnerable workers are able to band together in order to ameliorate their working lives:

> 58 This then is a fundamental purpose of s. 2(d) - to protect the individual from "state-enforced isolation in the pursuit of his or her ends": *Alberta Reference*, at p. 365. The guarantee functions to protect individuals against more powerful entities. By banding together in the pursuit of common goals, individuals are able to prevent more powerful entities from thwarting their legitimate goals and desires. In this way, the guarantee of freedom of association empowers vulnerable groups and helps them work to right imbalances in society. It protects marginalized groups and makes possible a more equal society.

14. The Migrant Worker Alliance for Change and the Caregivers' Action Centre provide a thorough summary of the *Charter* jurisprudence which supports access to meaningful collective bargaining for migrant caregivers.[9] Please see the excerpt at Appendix A to this Submission.

15. In addition to the Board and the Supreme Court of Canada, Article 3 of the International Labour Organization's Convention 189 on the rights of domestic workers expressly makes it an obligation of signatories to respect, promote and realize the fundamental principle and right at work to "freedom of association and the **effective recognition** of the right to collective bargaining." Although Canada has not ratified Convention 189, a number of top source countries for the Caregiver Program, including the Philippines, are signatories.[10]

The *Code* Does Not Provide Meaningful Access to Collective Bargaining for Caregivers

16. The *Code*, as it is currently structured, does not provide meaningful access to migrant caregivers. The *Code*'s Wagnar Act structure is designed to facilitate unionization and collective bargaining at single large worksites, like the large industrial factories that were prominent in the first half of the 20th century.

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[9] *Supra*, Note 5 at p. 7-8.

[10] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460:NO

17. The *Code* has not been designed or adjusted to account for the growth of smaller employers and worksites. The Special Advisors in the Ontario Review framed the problem as follows:

> We have pointed out, above, and in our Interim Report, that the current *Wagner Act* single employer and single enterprise model of certification does not provide for effective access to collective bargaining for a large number of employees of small employers and employers with multiple locations. Organizing and bargaining individual contracts in thousands of small locations is inefficient, expensive and impractical. The single employer recommendations, above, address the single and multiple location issues of larger employers, but not the issue of many individual small employers, thus leaving a significant vacuum in many areas where collective bargaining is unlikely to take root. In Ontario, the union coverage rate in the private sector is below 7% in workplaces with fewer than 20 employees. Like the majority of Special Advisors in British Columbia, we share the concern about the nature of the problem but, unlike them, we have concluded that providing a multi-employer bargaining framework is not practical at this time.[11]

18. Of course, the inability of the *Code* to provide meaningful access to collective bargaining for employees at small workplaces extends to migrant caregivers. Indeed, the primary reason why the *Code* does not provide meaningful access to collective bargaining for migrant caregivers is the fact that these workers often are the only employee of their employer. Couple that with the fact that the worksite is the private residence of the employer. These conditions simply do not make it viable for unions to organize these workers into bargaining units as currently envisioned and required under the statutory framework of the *Code*.

19. The specific problems associated with providing collective bargaining to migrant caregivers were identified not long after the release of the Baigent, Ready, Roper 1992 Report.[12] The seminal analysis on broader based bargaining for migrant caregivers remains the report released by Intercede and the Ontario District Council of the International Ladies' Garment Workers' Union (the "**Intercede Report**").[13] The Intercede Report identifies three key features of migrant caregiving work that puts meaningful collective bargaining out of reach for migrant caregivers:

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[11] *Supra*, Note 3 at p. 352.

[12] Baigent, Ready and Roper, *A Report to the Honourable Moe Sihota, Minister of Labour: Recommendations for Labour Law Reform* (September 1992).

[13] Intercede and the Ontario District Council of the International Ladies' Garment Workers' Union, *Meeting the Needs of Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers* (February 1993) <http://equalpaycoalition.org/wp-content/uploads/2016/01/Meeting-the-Needs-of-Vulnerable-Workers-1993-Intercede-and-ILGWU-1993-Report-C1497550xA0E3A.pdf>

a. Exclusion from the Ontario Act and the Ontario Act's requirement for at least two persons in a bargaining unit. This is not a concern in BC. Caregivers as a class of workers are not excluded from the *Code*. Furthermore, the Board has confirmed that the *"Code* contemplates the possibility of certifying a bargaining unit of one person."[14]

b. The inherent vulnerabilities associated with being a migrant caregiver (eg. sole employee at the worksite, worksite as residence, cultural and linguistic barriers, precarious immigration status, etc.) exacerbate the inequality of bargaining power that is inherent in any employment relationship. This makes collective bargaining at a single worksite completely impractical.

c. Trade unions, for the most part, do not have the resources to negotiate and administer multiple collective agreements at single-employee worksites. That is simply not feasible.[15]

20. Aside from the first concern, the concerns cited with respect to access to collective bargaining in the Intercede Report remain relevant today in the British Columbia context.

Broader Based Bargaining is Needed

21. Although the Special Advisors in the Ontario Review rejected broader based bargaining on the basis that Ontario simply did not have experience with these type of bargaining structures, the same cannot be said for British Columbia.

22. One of the primary reasons for extending broader based bargaining to other sectors of the economy, including the caregiving sector, is the fact that we have experience with broader based bargaining in health care and community social services in British Columbia.

23. The MWC advocates for adding provisions to the *Code* which would create broader based bargaining for migrant caregivers in a system that is patterned on the *Health Authorities Act* (the "***HAA***") and the *Community Social Services Labour Relations Act* (the "***CSSLRA***").

Health Sector and Community Social Services Sector

24. Broader based bargaining is not new in British Columbia. Broader based bargaining is used in the publicly funded health sector and community social services sector. The *Code* does not specifically provide for broader based bargaining in these sectors. Instead, specialized

[14] *Fleetwood Sausage,* BCLRB Decision No. B364/2000 (upheld on reconsideration in BCLRB Decision No. B104/2001) at para. 104.

[15] *Supra*, Note 11 at p. 26.

sectoral labour relations legislation (ie. the *HAA* and the *CSSLRA*) created the broader based bargaining systems in these sectors that have been in place for approximately two decades.

25. Part 3 of the *HAA* sets out a system for health sector labour relations that was first conceived by Arbitrator James Dorsey, QC as part of his recommendations to government in 1995.

26. Section 19.4 of the *HAA* sets out five appropriate multi-employer bargaining units in the health sector (residents, nurses, paramedical professionals, facilities subsector and community subsector).

27. Section 19.4(3) of the *HAA* requires that all unionized employees in the health sector. The "health sector" is defined as all employers who are members of the Health Employers Association of BC ("**HEABC**"). Generally, this includes employers who receive public funding to provide health in BC.

28. Additionally, unions representing unionized health sector employees under the *HAA* must be members of bargaining associations (eg. the Community Bargaining Association): section 19.9. These bargaining associations are governed by articles of association which set out rules for negotiating and administering the sectoral collective agreement for each of the five statutory bargaining units.

29. Vice-Chair Saunders (as he then was) provides the following description of the multi-employer health sector labour relations:

> **22** I begin by briefly elaborating on the two tier representational model established under Part 3 of the Act. Bargaining unit structure and union representation in the health sector is more complicated than in the usual private sector context. The "first tier" of health sector representation is relatively simple; the "second tier" is less so.
>
> **23** With respect to the first tier, which concerns collective agreement negotiation, there are five statutorily mandated bargaining units. Each of those units has its own statutorily mandated bargaining association. Each of those bargaining associations negotiates a collective agreement with HEABC and each of those collective agreements covers all of the employees in that first tier bargaining unit. Thus, for example, the Facilities Bargaining Association negotiates the Facilities Collective Agreement which covers employees of PHC in the facilities subsector bargaining unit ("FBU").
>
> **24** With respect to the second tier, which concerns collective agreement administration, multiple unions belong to each of the bargaining associations. Those member unions are certified to represent employees within a second tier unit. Pursuant to that certification entry, the union administers the

collective agreement on a day-to-day basis with the "collective agreement employer": *Interior Health Authority, et al.,* BCLRB No. B97/2012, at para. 45. IUOE's second tier unit includes employees at two of PHC's worksites as noted above.[16]

30. A similar scheme was implemented in the community social services sector in 2003. Following the recommendations of public administrator, Peter Cameron, the government of the day enacted the *CSSLRA*. The effect of the *CSSLRA* was to consolidate a number of individual bargaining units held by a number of bargaining agents into three bargaining units. A system similar to the *HAA* was implemented involving a multi-employer agent and union bargaining associations.

31. Section 2 of the *CSSLRA* makes the Community Social Services Employers' Association ("**CSSEA**") the bargaining agent for all community social services providers who are members of CSSEA and who have unionized employees. Membership in CSSEA is tied to a number of criteria, including the percentage of funding received by the social services agency in question.

32. Section 4 of the *CSSLRA* requires the formation of a bargaining association (eg. the Community Social Services Bargaining Association or CSSBA) composed of unions representing employees in one or more of the three statutory bargaining units under section 3 of the *CSSLRA* (eg. Community Living Services, Aboriginal Services and General Services).

33. The CSSBA negotiates a single collective agreement with CSSEA for each of the three statutorily mandated bargaining units. It also plays a role in collective agreement administration on major issues impacting the entire bargaining unit. The conduct of the CSSBA with respect to negotiating and administering sectoral collective agreements is governed by articles of association.[17]

Past Proposals for Broader Based Bargaining for Migrant Caregivers

34. The Baigent, Ready and Roper Report, the MWAC/CAC Submission and the Intercede Report and Quebec's 2009 *Home Childcare Providers Act* ("***HCPA***") also provide fruitful guidance on tailoring a broader based bargaining system for migrant caregivers.

35. Osgoode Hall Professor Sara Slinn reviewed these broader based bargaining models in her report for the Ontario Review.[18]

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[16] *Providence Health Care Society (Mount Saint Joseph Hospital)*, BCLRB No. B31/2014

[17] *Centaine Support Services Inc.*, BCLRB No. B118/2008 at para. 24.

[18] Sara Slinn, *Changing Workplaces Review Research Projects: Collective Bargaining* (November 30, 2015) <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1177&context=reports>

36. Professor Slinn described the Baigent-Ready Model as follows:

> The Baigent-Ready model is based on "sectors", which are defined geographic areas, such as a neighbourhood, city, metropolitan area or province, containing similar enterprises with employees performing similar work. An example of such a sector would be "employees working in fast food outlets in Burnaby" (Government of British Columbia, 1992, pp. 31). This model would apply only to sectors the labour board declares to be "historically underrepresented by trade unions", and when the average number of full-time employees, or the equivalent number of part-time employees, at all work locations within the sector is less than 50. Therefore, the model targets small workplaces with low rates of unionization.
>
> Initial sectorial certification would operate as follows. If a union had support from at least 45% of employees at each work location within an eligible sector, the union could apply for certification of that multi-workplace bargaining unit. If the board declares the sector historically underrepresented, is satisfied that requisite support exists, and that the unit is appropriate for collective bargaining, then it would order a representation vote of all employees in the unit…The Baigent-Ready model contemplates that multiple unions may be certified within a single sector, each union administering its own collective agreement. The majority of the sub-committee explained: "This feature has several advantages. It ensures that unions who are certified within a sector are not granted a monopoly on representation rights while offering employees within a sector the option of choosing from more than one union" (Government of British Columbia, 1992, p. 31).

37. Professor Slinn's summary of the HCPA is also worth reproducing:

> The HCPA established a new sector-based collective bargaining regime for home childcare workers in the province. Associations are certified, based on majority support, as exclusive bargaining agents for home childcare workers (who are deemed to be "own-account self-employed" workers) in a given territory who are affiliated with the same home childcare coordinating office. Certified associations' rights and obligations include defending and promoting "the economic, social, moral and professional interests of home childcare providers" and bargaining a "group agreement" under the HCPA, and they may bargain in groups of associations.

> Negotiations take place between the Minister Responsible for Childcare Services and associations, and may be initiated by either side…[19]

38. The MWAC/CAC Submission proposes the following three elements for broader based bargaining for caregivers:

> The necessary elements of a broader based bargaining system would include:
>
> i. designation of the regions for bargaining (whether it is on a provincial basis or designated regions with the province);
> ii. designation of an employer bargaining agent; and
> iii. recognition of workers' bargaining agents, including the ability of migrant workers' unions to operate union hiring halls.[20]

39. The Intercede Report proposed the following structure for broader based bargaining for domestic workers:

> 1. For the purposes of certification, domestic workers would be organized into two separate sectors, live-in and live-out workers.
>
> 2. Domestic workers would be then classified on the basis of geographic or regional designation (ie. the Greater London area or some other region that makes sense).
>
> 3. The certification process would be initiated by the signing of a majority of domestic workers registered in a specific geographical region.
>
> 4. Once a preponderance of a regions have been certified, a conference would be called by the Ministry of Labour between the employers and union representatives regarding extension of the collective agreement to all domestic workers.
>
> 5. Collective agreements would be enforced through monthly reports submitted by the employer, the Union's inspection of the employer's records, and collective agreement negotiations.[21]

MWC Proposal for Broader Based Bargaining

40. The sectoral bargaining structures in the health sector and community social services sectors in this province provide a strong basis on which to extend broader based bargaining

[19] *Ibid*, at p. 82
[20] *Supra*, Note 5 at p. 11.

[21] *Supra*, Note 12 at 78-79.

in other sectors, including the private caregiving sector. This is particularly so given the underlying similarities between health, social services and caregiving work.

41. Additionally, the Baigent-Ready Model, the MWAC/CAC Submission, the Intercede Report and Quebec's *HCPA* provide fruitful guidance on tailoring a broader based bargaining system for migrant caregivers.

42. Based on the foregoing, I provide the following recommendation for adding provisions in the *Code* to facilitate broader based bargaining for migrant caregivers:

    a. Multi-employer and multi-union bargaining associations should be statutorily created for the private caregiving sector. Those associations should be similar in structure to HEABC and CSSEA (on the employer side) and the various bargaining associations (on the union side).

    b. Statutory bargaining units defined by geographic regions should be created. For example, a sample bargaining unit could consist of all caregivers working in private residences in Burnaby, BC.

    c. Certification would have two phases:

        i. The first phase is at the level of an individual employer and worksite. An individual union (eg. the BCGEU, HEU, CUPE, USW, UFCW etc.) would apply for certification.

        ii. The second phase is at the sectoral level. This involves all worksites in the broader geographic region defining the bargaining unit. Before sectoral bargaining structures via the employer and union associations are implemented, the unions having certified the individual worksites would have to show that a majority of the caregivers within the geographically defined bargaining unit support unionization.

    d. Once two-phase certification is achieved, the "first tier and second tier" labour relations scheme utilized in health care would apply. At the first tier, the employer and union bargaining associations would negotiate a single sector-wide collective agreement which would apply all employers with employees in the broader geographically defined bargaining unit. At the second tier, the individual unions in the bargaining association would then be responsible for day to day administration of the collective at the individual worksites wherein they have certified as bargaining agent.

    e. Collective bargaining and collective agreement administration by constituent unions in the bargaining associations would be defined by articles of association.

43. The advantages of this proposed system is that it is largely based on a model that has already been implemented in British Columbia for decades.

44. Additionally, employers of caregivers are already required to participate in uniform legal processes as part of being legally eligible to hire and employ migrant caregivers. For example, all migrant caregiver employers have to apply for a Labour Market Impact Assessment from Employment and Social Development Canada prior to being eligible to apply for a work permit for a migrant caregiver. Additionally, employers of caregivers are required under section 15 of the British Columbia *Employment Standards Act* to register live-in domestic workers with the Employment Standards Branch (the "**ESA Registry**").[22]

45. The additional step of registering with an employer association is comparable to the LMIA and ESA registration process. Moreover, it is a paltry requirement when compared to the principle of affording collective bargaining to a vulnerable group of workers.

46. Additionally, the ESA Registry provides a ready-built employee list for the Board to assess whether there is sufficient support within the entirety of the statutorily created and geographically defined bargaining unit described above to warrant certification on a sector-wide basis.

Conclusion

There is a need to address the vulnerabilities in the working lives of migrant caregivers. Access to meaningful collective bargaining is a means to address these vulnerabilities. Unfortunately, the current system Wagner Act model under the *Code* does not provide meaningful access to collective bargaining for migrant caregivers.

In these submission, the MWC has proposed additions to the *Code* which could provide meaningful access to collective bargaining for migrant caregivers. The MWC proposal does not re-invent the wheel. Instead, it makes use of existing legal mechanisms (eg. the *HAA*, the *CSSLRA*, the LMIA and the ESA Registry) to facilitate broader based bargaining for migrant caregivers.

Migrant Workers Centre
Per:

Rene-John Nicolas
Board of Directors

[22] https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/specific-industries/information-for-domestic-workers-and-their-employers

March 4, 2023

VIA EMAIL: lrcreview@gov.bc.ca

Sandra Banister, K.C., Michael Fleming, Lindsie Thomson
Labour Relations Code Review Panel

RE: LABOUR RELATIONS CODE REVIEW SUBMISSION

Dear Sirs/Mesdames,

Please accept this letter as the submission of the North Central Labour Council (NCLC) regarding the changes to the Code that we believe are necessary in order to properly reflect the needs and interests of workers and employers in the context of our modern economic realities.

The NCLC will attend at the Prince George in-person meeting and would like to make an oral presentation to the Panel.

Protecting Workers Rights by:

1. Expanding successorship protection to all workplaces;
2. Ensuring provincial workers are able to honour federal picket lines;
3. Extending the freeze period until a first agreement is reached;
4. Ensuring that remote or digital workers have the right to establish virtual picket lines, communicate about the strike with the public and that a virtual picket line has the same standing as any other picket line;
5. Affirming that *online platform workers* are covered by the definition of employee in the Code and have the right to organize;
6. Allowing secondary picketing at or near sites the struck employer is using to perform work, supply goods or furnish services that are substantially similar to those of the striking workers;
7. Clarifying the definition of common employer to prohibit double breasting;
8. Establishing a single-issue panel to examine the impact of artificial intelligence and automation on BC's workplaces; and
9. Strengthening the language in Section 54 to require a negotiated adjustment plan when an employer introduces a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees.

Improving Access to Collective Bargaining by:

1. Establishing a single-issue panel to consult on implementing sectoral/broader-based bargaining to address BC's changing workplaces structures, high level of worker precarity and the barriers to unionization that continue to exist for too many workers;
2. Promoting the successes of single step certification; and
3. Providing access to employee lists where a union is able to demonstrate a threshold of 20% support of employees in the proposed unit.

Improving LRB processes by:

1. Substantially increasing funding for the Board; and
2. Improving timely access to LRB services and decisions.

Move forward on reconciliation with Indigenous peoples by:

1. Acknowledging Labour's commitment to reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration. Labour strongly believes that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.

Matt Baker
President

Candis Johnson
Vice President

Good morning,

The North Okanagan Labour Council would like to put forth the following recommendations for consideration to the Review panel.

Protecting Workers Rights by:

- Expanding successorship protection to all workplaces;
- Ensuring provincial workers are able to honour federal picket lines;
- Extending the freeze period until a first agreement is reached;
- Ensuring that remote or digital workers have the right to establish virtual picket lines, communicate about the strike with the public and that a virtual picket line has the same standing as any other picket line;
- Affirming that online platform workers are covered by the definition of employee in the Code and have the right to organize;
- Allowing secondary picketing at or near sites the struck employer is using to perform work, supply goods or furnish services that are substantially similar to those of the striking workers;
- Clarifying the definition of common employer to prohibit double breasting;
- Establishing a single-issue panel to examine the impact of artificial intelligence and automation on BC's workplaces; and
- Strengthening the language in section 54 to require a negotiated adjustment plan when an employer introduces a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees.

Improving Access to Collective Bargaining by:

- Establishing a single-issue panel to consult on implementing sectoral/broader-based bargaining to address BC's changing workplaces structures, high level of worker precarity and the barriers to unionization that continue to exist for too many workers;
- Promoting the successes of single step certification; and
- Providing access to employee lists where a union is able to demonstrate a threshold of 20% support of employees in the proposed unit.

Improving LRB processes by:
- Substantially increasing funding for the Board; and
- Improving timely access to LRB services and decisions.

Move forward on reconciliation with Indigenous peoples by:

Acknowledging Labour's commitment to reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration. Labour strongly believes that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.

Many thanks!

Nicole Cabrejos
NOLC
President

March 19, 2024

To: Labour Relations Code Review Panel 2024
Re: Feedback on behalf of the Post Secondary Employers' Association

In response to your letter dated February 2, 2024, we are pleased to provide the following feedback. In addition to this specific feedback, we would appreciate an opportunity to provide feedback on any major changes being considered.

The Post Secondary Employers' Association is the employer bargaining agent for all public colleges, special-purpose teaching universities, and institutes in British Columbia. These nineteen institutions[1] are governed by the College and Institute Act and the University Act, respectively.

Stability

Overall, employers in our sector have been pleased with the support received from the Labour Relations Board and appreciate the stability provided by minimal changes to the Labour Relations Code. We appreciate the balancing provided in the last review and we believe that minimal changes are necessary given the recent amendments in 2019, 2020 and 2022.

Covid 19 and remote work

The public post-secondary sector was significantly impacted by the pandemic. Social distancing required a change in operations, and as a result, some institutions across our sector have implemented remote work and hybrid remote work options which have continued post pandemic.

The Labour Relations Code in its current form was able to address any labour issues which arose. In 2021, the Labour Relations Board supported 11 employers and 11 unions in our sector with Labour Relations Board appointed mediators to assist with various applications filed under Section 88 and 54 of the Labour Relations Code. Further, we experienced a strike at one of our institutions in 2023 and the remote work and hybrid remote schedules were addressed through the normal Labour Relations Board processes. As such, we caution of any changes being proposed due to the social and economic impacts which arose or accelerated due to the pandemic.

Picket lines and virtual picket lines

With the rise of remote work, this may present new legal questions for the Board. However, we do not believe a change to the legislation is necessary. Recently, the Alberta Labour Relations Board grappled with the issue of the location of a picket line where all employees worked remotely.[2] The Alberta Labour

[1] British Columbia Institute of Technology, Camosun College, Capilano University, Coast Mountain College, College of New Caledonia, College of the Rockies, Douglas College, Emily Carr University of Art & Design, Justice Institute of British Columbia, Kwantlen Polytechnic University, Langara College, Nicola Valley Institute of Technology, North Island College, Northern Lights College, Okanagan College, Selkirk College, University of the Fraser Valley, Vancouver Community College and Vancouver Island University

[2] *Bioware ULC v United Food and Commercial Workers Canada Union, Local No. 401*, 2023 CanLII 109272 (AB LRB)

Relations Board was able to adequately address the concerns of all parties within the existing framework of their legislation. In our opinion, the existing language of the British Columbia Labour Relations Code is able to address any unique remote or virtual work concerns and their interactions with picket lines.

Section 99 and 100

In 2018, the Panel recognized the bifurcations of jurisdiction under Section 99 and 100 of the Labour Relations Code "obligates parties to file applications in both forums adding expense, delay and uncertainty". In order to address the problem, the Panel recommended amending section 100 to "codify the rare and exceptional circumstances that will engage Section 100."

Unfortunately, the changes implemented from the 2018 report did not fully address the problem. The overlapping jurisdiction continues to create uncertainty and delay. In one particular instance, both the Labour Relations Board and the British Columbia Court of Appeal held that they did not have jurisdiction[3]. In another instance, the employer had to argue for an extension of the timelines under the Labour Relations Code including arguments on jurisdiction before the Labour Relations Board,[4] and a jurisdictional argument before the British Columbia Court of Appeal.[5]

As repeatedly cited in the case law, situations where the British Columbia Court of Appeal will have jurisdiction are rare, yet maintaining the mutually exclusive jurisdictions in its current form continues to create uncertainty, and unnecessary expense and time. We believe that this is an area for the Panel to explore a different solution.

Standard of Review

In 2018 the Panel recognized that changes to Sections 99 and 100 of the Labour Relations Code, may require a change in the standard of review. No changes were adopted. Recent decisions from the British Columbia Court of Appeal[6] have highlighted the extremely narrow scope the British Columbia Court of Appeal views as within its jurisdiction and increasingly arbitrators, and on appeal, the Labour Relations Board, are being asked to review decisions on matters of general law. Further, some arbitrations are complex, costly and formal processes which have large financial consequences for an employer, a sector, or the entire province. We submit the standard of review for arbitration decisions should be reasonableness as the general standard and correctness for matters of general law, even when it intersects with the collective agreement. Correctness should go beyond a review of whether the correct test was used.

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[3] See *West Fraser Mills Ltd. (100 Mile House Lumber Division) v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-2017*, 2020 BCLRB 124 and *West Fraser Mills Ltd. v. United Steelworkers, Local 1-2017*, 2021 BCCA 266 (CanLII)

[4] *Vancouver (City) v International Association of Fire Fighters, Local No.18*, 2023 BCLRB 95 (CanLII)

[5] *Vancouver (City) v. Vancouver Firefighters' Union, Local 18*, 2024 BCCA 33 (CanLII)

[6] For example, *Canadian Forest Products Ltd. v. Public and Private Workers of Canada, Local No. 18*, 2022 BCCA 89 (CanLII) and *Vancouver (City) v. Vancouver Firefighters' Union, Local 18*, 2024 BCCA 33 (CanLII), and *West Fraser Mills Ltd. v. United Steelworkers, Local 1-2017*, 2021 BCCA 266 (CanLII),

Section 104 Expedited Arbitration

Expedited arbitrations under Section 104 of the Labour Relations Code may not be appropriate for all matters. In the collective agreements in our sector, the parties have turned their minds to what types of matters should be determined on an expedited basis, and which matters should proceed through the normal process. The wide-open application of Section 104 allows parties to circumvent those agreed upon divisions and push matters, such as complex interpretive matters, to an expedited forum which may not be appropriate.

Further, in some instances a matter may be put forward for expedited arbitration under Section 104 but the parties have not complied with all necessary steps in the grievance arbitration process under the collective agreement. In these instances, a party has had to wait for the arbitrator to be appointed to challenge the arbitrator's jurisdiction under section 104. Finally, as noted by the Panel in 2018, one of the benefits of Section 104 is the access to mediation, which greatly facilitates swift and efficient resolution of issues.

We propose the following changes to Section 104:

- Designate that only certain cases can be heard by through this process similar to how collective agreements allow for expedited arbitrations on certain issues.
- Make expedited arbitrations non-precedential.
- Provide the Labour Relations Board with a gate keeping function on what grievances can proceed to the expedited arbitration, with deference to the parties' collective agreement provisions.
- Provide the Labour Relations Board with a case management function. Currently this power rests with the arbitrator, so parties have to wait for the arbitrator to be appointed.
- Provide for mandatory or opt out mediation.

Finally, PSEA highly values the Labour Relations Board's mediators and adjudicators who are extremely beneficial in promoting a congenial labour relations environment and hopes that government funding will continue to maintain a strong and effective organization.

All of which is respectfully submitted,

Rebecca Maurer
Chief Executive Officer, PSEA

P|E|A

BC's Union for Professionals

Labour Relations Code Review Panel
lrcreview@gov.bc.ca

March 15, 2024

Dear panel members,

Thank you so much for the opportunity to participate in the review of the Labour Relations Code. We fully support the on-going reviews of the Code to ensure that it is meeting the needs of working people in BC.

The Labour Relations Code needs to keep up with changes in our modern workplaces and the emergence of new technologies. In the last five years we have seen significant changes that affect the work we do and how we do it. During the COVID-19 pandemic there was necessary growth of remote work, and many employers and workers have continued to embrace this model. Tens of thousands of workers are accessing employment through on-line applications in areas like food delivery and ride-hailing. And automation and AI are rapidly progressing and continue to impact how work is done.

While work is changing, the core problems workers face remain the same: not getting paid enough, having poor working conditions, and dealing with health and safety issues at work. Workers from marginalized communities still experience overt and systemic discrimination. And workers looking to organize continue to face barriers to unionization and tough fights to get a first collective agreement. It's important that our laws make things better for them.

Further, our collective commitment to reconciliation means we must ensure our laws and policies embrace the Declaration on the Rights of Indigenous Peoples Act. We need to make progress on reconciliation in our workplaces and communities.

Affiliates of the BC Federation of Labour have come together to identify shared priorities to help advance and protect workers' rights, reduce barriers to unionization and improve the operation of the Labour Relations Board.

We fully support the BC Federation of Labour's submission.

Sincerely,

Scott McCannell
Executive Director

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PROGRESSIVE CONTRACTORS ASSOCIATION OF CANADA

March 18, 2024

BC Labour Code Review Panel
Sent by email: lrcreview@gov.bc.ca

Dear Panel Members,

Re: British Columbia Labour Relations Code Review

As we did five years ago when legislative changes were being considered, the Progressive Contractors Association of Canada ("**PCA**") is pleased to have the opportunity of presenting our comments and recommendations in respect to the British Columbia *Labour Relations Code* (the "***Code***") review, as well as providing other comments and concerns relating to provincial labour relations in general. Like your previous review, the PCA would welcome the opportunity to meet directly with the Panel.

We recognize that the call for submissions is an important part of the review process, along with your in-person meetings that are scheduled. However, we do respectfully suggest that, should specific areas be identified as needing further policy development, the Panel should flag these areas so that the labour relations community can make further detailed submissions to aid the Panel when considering their recommendations.

Introduction

The PCA is the voice of progressive unionized employers in Canada's construction industry. PCA represents construction and maintenance contractors across Canada, with substantial activity in BC. PCA's national membership includes around 150 contractor organizations, and PCA members directly employ more than 40,000 employees, and many thousands more in affiliated organizations. PCA members have unionized relationships primarily with non-Building Trades unions (unions that operate on an industrial or multi-trade basis), but members also include Building Trades contractors and non-union contractors.

PCA is pleased to see, and agree with, the general tenor of the terms in your community letters to stakeholders. We fully appreciate that your terms of reference include the recognition from the Minister's mandate letter to "ensure our labour law is keeping up with modern workplaces." One of the most important aspects of our modern workplaces is the proportion of workers who no longer work under the traditional building trades union model. Today, of the 90,000 people working in non-residential construction, roughly 30,000 are unionized of which our PCA members represent over one-third of those unionized workers in BC.

Since our founding in 2000, PCA has worked to ensure fair access to work opportunities for contractors and workers by promoting a legislative framework and industry practices that establish a level playing field for all construction industry participants. PCA believes fairness means paying workers competitive wages and benefits and, most importantly, keeping them working. This can only be accomplished if there is an economic landscape in BC that supports investment and thriving businesses. We believe that fairness for workers and companies is best derived from stronger, more collaborative partnerships between employees and employers, rather than what tends to be a more adversarial relationship.

Therefore, our submission will again focus on encouraging initiatives that foster collaboration, cooperation and build trust, and discourage proposals that undermine these principles that are so necessary to BC's long-term economic success for all British Columbians.

Proposed Code Changes

PCA provides comments on the following issues:

Open periods – Raiding Periods

In 2019, the BC Government's Labour Relations Code Review Panel (the "**Panel**") recommended that there be open periods (also known as raiding periods) every 3 years for all industries. Against the recommendation of the government's own Expert Panel, it was decided that in the construction industry there would be annual open periods every July and August

There are sensible reasons for having an open period every 3 years. For contractors, annual raids can be costly to their businesses. Annual open periods can result in lost productivity because a raid is disruptive, destabilizing, and counterproductive. The cost impact and prospect of a potential raid every year on business would be like the province having to run an election each year. These current rules for the construction sector lead to instability in our industry.

PCA recommendation #1: that the Labour Code be amended so the Open Period falls during the last two months of a collective agreement, at a minimum every 3 years.

Secret Ballot Votes

The Panel also recommended that on certification matters, the determination of success or failure should be made in each case on the basis of a secret ballot vote. This is the procedure provided in labour legislation in almost all Canadian jurisdictions.

In the construction industry, employees belong to more than one union. Membership cards are not, and should not, be viewed as an indication of whether the employee supports a particular trade union for a particular project or employment relationship. Employees often support whichever union happens to be in place in respect to their employment. Without a secret vote, the employer invariably is left questioning whether its employees actually do support the applicant trade union in certification matters. This then often leads to problems in negotiating and concluding collective agreements.

The only effective determination that satisfies these concerns is to have the matter determined by a secret ballot vote. This rule as well is supported by the International Labour Organization (ILO). Any concern about an intervening delay in processing a certification application where a secret ballot vote is compulsory can be removed by having the vote taken within 2 weeks of the date of the application, with the ballots uncounted while the application is processed, and validity concerns and legal requirements are dealt with. If the application is valid, then the votes are counted. This is the process that is properly carried out in other jurisdictions.

PCA recommendation #2: that the Labour Code revert to the previous requirements for a representation vote and move away from automatic certification.

Common Employers and Successorship

In construction, there should be no change to the current position. In recognition of the long-standing ability to operate businesses on a double-breasted basis, employers have structured their enterprises to accommodate the reality that owners of projects have different views as to their preference relating to union status. To change these practices would be destructive of industry stability and is clearly not needed at a time when this industry is doing well overall.

PCA recommendation #3: no change be made to existing common employer provisions and successorship rights within the Labour Code.

Collective Bargaining Models

There has been some suggestion that BC should legislate different and varying collective bargaining models for this province, such as sectoral bargaining. It is astonishing to the PCA that the Panel or Government would want to interfere with what has been such a success generally in this province.

Sectoral bargaining would be a significant change to the structure and dynamics of BC labour relations. It would encroach upon individual free bargaining and would likely run afoul of the *Canadian Charter of Rights and Freedoms*. Nothing is broken that must be fixed. Please do not create significant unrest where it is not needed.

PCA recommendation #4: reject any suggestion to implement sectoral bargaining within the construction sector.

Threats of Fines or in respect to Pensions and Benefits

There should be clear language in the *Code* that prohibits unions threatening employees with fines or loss of pension or benefits because of their union affiliation. It is a tactic that some unions employ to pressure and punish individual workers. It is a restraint of trade, and it is contrary to the interests of workers seeking to provide for their families.

PCA recommendation #5: amend the Labour Code to provide clear language that prohibits unions from threatening workers with fines or loss pension and other benefits due to union affiliation.

Duplicate Jurisdictions

It is untenable for employers with collective agreements to find that in situations where an employee has a claim against an employer for a human rights violation, employment standard issue, labour code violation, WorkSafe BC issue or any other avenue to file a grievance, the employee is entitled to choose multiple remedial tracks to follow: through the various provincial tribunals (such as the Human Rights Tribunal), to grievance arbitration that is adjudicated upon by an arbitrator, or conceivably to pursue both these options. When employees are bound by their collective agreement, their recourse should be limited to grievance arbitration only.

In Alberta, there is a provision in its Labour Relations Code that allows for marshalling of related proceedings from multiple forums. It helps to avoid unnecessary litigation and duplicated use of party and government resources. It also helps to handle disputes efficiently.

PCA recommendation #6: amend the BC Labour Relations Code to allow for the marshalling of various grievance avenues through a collective agreement's arbitration process.

Project Labour Agreements/Community Benefits Agreements and Union Bias

Since the last Labour Relations Code Review, the Government of BC has expanded its use of various forms of restrictive Project Labour Agreements ("PLAs"), including the Community Benefits Agreements ("CBAs"), that privileges those affiliated to one particular labour model at the expense of all others. Our members in BC have for too long been subject to this obvious and open bias in respect to union affiliation. The bias understood by all our members is that the BC Government favours the BC Building Trade Unions ("**BTU**").

Our members' employees have been organized by an alternative union to the BTU, CLAC. CLAC has more than 65,000 members and more than 10,000 members working in BC. Most of these members are BC residents and taxpayers. Most of these members and their families vote. We fail to see the fairness of punishing workers because they have chosen to exercise their right under the *Code* to be represented by a union that is an alternative to the BTU.

This continued attempt to divide the construction industry is not sensible or fair. The Government does not gain more support with these biased measures. It loses support because of these biases. Our contractors' workers and their families recognize what is happening and that it is unjust.

PCA submits that the exclusion of all but BTU workers and contractors from the CBAs and other restrictive PLAs on public infrastructure projects is unjust discrimination that should not continue. Valuable construction work should be open for all to bid on through a fair and open tendering process.

Construction works best when there is competition. Competition has created tremendous benefits for workers, the public, and the development of construction projects in BC. It is surprising that the Government would seek to hinder competition in order to favour the BTU. That is unhelpful to our community. Having unions and contractors competing is healthy for BC, just as competition is healthy for all economies. It forces organizations to achieve greater efficiency and effectiveness.

PCA strongly rejects the use of restrictive PLAs and CBAs as they are, in our view, quite regressive for a small, open economy like BC. The use of these restrictive models also hinders the overall competitiveness of our economy.

Furthermore, the PCA asks that this Government not exclude a majority of workers and contractors from work opportunities and not deprive taxpayers of the benefit of competition for this work. Fostering monopolies should not be any Government's mandate or principle. BC should return to sensible competitive industry practices to the benefit of all British Columbians.

PCA recommendation #7: eliminate the use of restrictive PLAs/CBAs that exclude the majority of workers and contractors from work opportunities and thus deprive taxpayers of the benefit of competition through a fair and open tendering process.

Conclusion

PCA largely favours leaving the Labour Relations Code alone, however, there are several factors to consider that can improve BC's labour legislation. The considerations we put forward would respect worker choice and freedom, promote competition, foster stability, enhance efficiency and generate investment and economic growth.

PCA appreciates the opportunity to make a submission on these important matters. We hope the Panel takes this opportunity to recommend sensible changes that will foster competition and fairness for all workers, unions, and contractors. While our organization appreciates the chance to be consulted, we are concerned though with the compressed timetable for your review ahead of a provincial election later this year. Should the government proceed with changes, we hope there is a chance to be further consulted over the specific proposed changes.

Thank you again for allowing us to share our thoughts. Please do let us know if you need any further information.

Respectfully yours,

Dan Baxter
Regional Director, BC
Progressive Contractors Association of Canada (PCA)

cc. Paul de Jong, President and CEO, PCA
Darrel Reid, VP Public Affairs, PCA

On Behalf of the Public and Private workers of Canada, please accept our request for changes for the following:

- Section 54 of the *Labour Relations Code*
- Section 64 of the *Employment Standards Act*
- Arbitration Delay

Recently, the BC Labour Relations Board has issued several decisions which interpret the *Labour Relations Code* and *Employment Standards Act* in a way that narrows the rights of unionized employees. These decisions have illustrated ways that the legislation could be made more clear, so as to achieve what was intended and improve the statutory protections.

These issues have had a particular impact on the members of PPWC, given the nature of the industries we predominantly represent (i.e. industrial workers, mill workers, etc.).

The first issue relates to s. 54 of the *Labour Relations Code* and the other to s. 64 of the *Employment Standards Act*. We would also like to discuss the ongoing problem of undue delays in the arbitration process and changes that can be made to assist with those substantial delays.

Section 54 of the *Labour Relations Code*

- S. 54 of the *Code* requires employers to give notice to the union if it intends to introduce a change that will affect the terms, conditions or security of employment of a significant number of employees under a collective agreement
- The provision requires that 60 days' notice be given to the union and that good faith discussions take place to try address the change and lessen its impact on employees
- Recent decisions of the Board, including in *Canfor Pulp Ltd. (Re),* [2020] BCLRBD No. 132, have concluded that s. 54 does not apply to temporary layoffs of large groups of employees, so employers do not have to give notice to the union and meet in good faith when the employer intends to close an industrial plant and lay off all the workers, if the closure is expected to be temporary
- The *Canfor Pulp* decision related to employees at the pulp mills in Prince George represented by PPWC
- By not requiring s.54 to be followed, the Board has ignored that the closure of a mill and the layoff of all of the mill's employees, even if it is just for a month or two months (although it can prove to be longer) has a very significant impact on all of the workers, their families, and the community
- The reasoning of the Board that notice does not need to be given to the Union for a "temporary" shutdown has a disproportionate impact on unionized employees in the industrial and natural resource sectors.

- The effect is that mass layoffs, which have a huge impact on employees and communities, can occur without notice or consultation with the Union
- The lack of adequate notice can also leave employees without a way to financially plan for the loss of work that can span from several weeks to months.
- There is no good reason for the protection of s.54 to be narrowed in this way. It can and should apply when an employer plans a temporary shutdown of a mill, industrial plant, or other operation – whenever a large number of employees will be affected.
- If employers are not required to provide notice, or to meet and attempt to address the impact of a shutdown with the union, the very purpose of s. 54 is undermined.
- Fortunately, this could be solved with only minor changes made to the *Code.* The *Code* should reflect the importance of giving s. 54 notice in all cases of a planned shutdown, including in cases when layoff is expected to be temporary:
    - for example, by adding an express reference to temporary curtailments of business operations in s.54(1) and / or by including reference to broader terms of resolution in s. 54(1)(b) that address potential responses to temporary layoffs

Section 64 of the Employment Standards Act

- s. 64 of the Employment Standards Act addresses situations when a large group of employees lose their employment at the same time, for example when there is a plant closure. It requires employers to give a special notice group notice of termination, or to provide group termination pay to employees in lieu of notice
- The obligation arises when 50 or more employees are to be terminated in a 2-month period. It is intended to protect and assist employees, their families, and their communities when a large number of employees in the same industry lose their jobs at the same time.
- Unfortunately, the way that s.64 of the ESA has been interpreted by the Board has left a gap in this protection for unionized employees.
- This problem has been revealed by the fate of the workers, PPWC members, who lost their jobs when the Mackenzie sawmill operated by Canfor closed in 2019. Virtually all of the mill's 187 employees lost their jobs. Initially, the closure was "temporary," then "indefinite," and then it proved to be permanent.
- None of these workers has received group termination pay.
- The problem was that the workers had a right of recall, if the mill were to reopen, under the collective agreement. Employees did not have an opportunity to be recalled before those recall rights expired, but the length of each employee's recall right depended on their seniority. Employee had different lengths of recall rights, which expired at different times.
- So, the Employer maintained that employees were not "terminated" at the same time (arguing that they were not technically "terminated" until their recall rights had expired), so s.64 of the ESA did not apply.
- The Union has maintained throughout that when employees all lose their jobs at the same time, the protection of group termination pay was intended to apply. When a closure has become permanent and the recall rights of employees have all ended, then the initial date of the mill closure, when

everyone was laid off, must be seen as the termination date when applying s. 64 of the *Employment Standards Act*.

- Although the Union was successful at arbitration, the Labour Board overturned the decision on appeal and held that even for the purposes of applying s. 64, the termination date of employees should be seen as the date when each employee's recall rights expire.
- The result of the decision is that s. 64, group termination pay, will not apply to unionized employees with staggered recall rights based on seniority.
    - Yet, the vast majority of collective agreements that provide for a recall right have a seniority-based recall right, such that s.64 group termination pay will be unavailable following a shutdown, just as it was for employees at the Mackenzie sawmill.
- This leaves most unionized employees with recall rights unprotected from the effects of a group termination if they are laid off, en masse, and permanently lose their employment.
- It is easy to see how the purpose of this statutory protection is undermined – the intent of s.64 is to mitigate the harm of a large group of employees, with similar skill sets, flooding into the local job market (often in small communities) around the same time, creating a shortage of employment opportunities and a huge negative impact on the local community
- It addresses the particularly difficult economic effects of this situation on employees, and their families and communities
- That is exactly what happened at the Mackenzie Mill where almost 187 employees of the Mill were permanently laid off on the same day, June 19, 2019, all with similar skills and qualifications. Flooding the labour market in their small community.
- This, too, is a gap in the legislation that could be resolved quite simply. For example:
    - adding a deeming provision to s. 64 similar to what already exists in s. 63(5) (which applies to individual termination pay):
        - "for the purpose of determining the termination date under this section, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff."
    - This could also be accomplished by replacing the words "under this section" in section 63(5) with the words "under this part" or amending it to say "under this section and s. 64" in that deeming provision

Delays in the arb process

- The arbitration process was intended to provide a quick way to resolve disputes under a collective agreement
- This is a central idea in our system of labour relations. Successful labour relations depends upon disputes being resolved quickly and effectively for the ongoing relationship and the stability of industrial relations.
- The Labour Relations Code expressly emphasizes the importance of efficiently resolving disputes at s. 2(e):

- “promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes”

- Yet, labour arbitration continues to fall short of this goal. It takes months or years to get a case to hearing. Hearings are long and costly. Decisions may take months to be issued, even after a hearing has concluded.
- Section 104 of the Code does provide an option to apply for a form of expedited arbitration, but that provision does not live up to its potential, and it has not solved the problem.
- Part of the issue is procedural delay and scheduling challenges, including due to the very busy calendars of the arbitrators who are currently available
- We encourage any reasonable measures that might alleviate the problem, including the following:
    - Expand and formalize a process for the training and mentorship of new arbitrators, with incentives for qualified individuals to become arbitrators, to expand the list of available arbitrators and increase availability.
    - Make reasonable amendments to the Code to require arbitrations to proceed quickly in all cases, while adding express procedural powers for arbitrators to set dates and to adapt hearing procedure, and limit evidence, so as to ensure a quick resolution of disputes
    - Amend s.105 of the Code (Mediation-Arbitration) to allow parties to apply for mediation-arbitration of a dispute without the consent of the opposing party.

THE Research Universities' Council OF BRITISH COLUMBIA

SUBMISSION TO THE SPECIAL COMMITTEE TO REVIEW THE LABOUR RELATIONS CODE
March 21, 2024

Introduction

The Research Universities' Council of British Columbia (RUCBC) works with and on behalf of the six major British Columbia universities − UBC, SFU, UVic, UNBC, RRU, and TRU − to improve the quality, accessibility, and coordination of university education in British Columbia. The Council provides its members with a single voice with respect to public policy issues including funding, research, accountability, admissions, and transfer.

This submission reflects the consensus view of the members of RUCBC with respect to the *Labour Relations Code* (the "*Code*"). We also believe that these recommendations have broad support within the post-secondary education sector, including the University Public Sector Employers' Association (UPSEA) and the Post Secondary Employers' Association (PSEA).

Purposes of the Code

We believe that the *Code* generally works well in providing governance to the relationship between unions and employers. The provisions set out in the *Code*, for the most part, appropriately balance the interests of unions and employers through the collective bargaining process and other tenets of labour-management relationships.

Our submissions are based on our observations of what has worked well and our experiences with various processes where the modification, or addition, of certain provisions would be to increase the effectiveness of this legislation.

All of the *Code*'s provisions should be supportive of the duties and purposes set out in section 2 of the *Code*. Changes should not be considered or made on the basis of whether they are advocated by the employer side or the union side; changes should be made where necessary to ensure that the purposes of the *Code* are met.

Changes should be made on the basis of sound labour policy. This committee is a panel of experts, tasked with determining labour policy that is in the best interests of the public and all parties, including employers, employees, and unions.

With that background in mind, we suggest that it may be appropriate to add to the duties of the *Code* set out in section 2 to reflect the Province's commitment to diversity, equity, and inclusion in the workplace and commitment to principles of truth and reconciliation.

Certification Process

Where a vote occurs, we are of the view that the Board's processes and procedures should be modern, secure, and accessible. It is important that all employees have a say in a certification vote, and the *Code* should facilitate this goal by ensuring that employees have many ways to cast their ballot, which may include secure electronic voting or in person voting, as appropriate.

Where a vote is necessary, certification should only occur where there is evidence of true majority support of the union. Namely, certification should only occur where the number of employees voting in favour of certification comprise at least 50% of the bargaining unit. If such a threshold does not exist, the Union may be certified without ever establishing, either through a vote or cards, that a majority of employees support the Union. Approval of certification applications should only be considered where there is evidence that a majority of the eligible workforce are in favour. Absent such evidence, it is not reflective of the choice of the employees to allow for certification to occur and therefore not consistent with the principles and purposes of the *Code*.

Variance Process

Under the Regulations, the Board may use payment of dues as evidence of union support. This provision should be amended to reflect only voluntary payment of dues. Payment of mandatory dues cannot be considered as evidence of union support.

Definition of Employee

There should be no changes to the definition of employee. In particular, there should be no changes to the definition that would treat students, operating in their capacity as students, as employees for the purposes of the *Code*.

Section 2 and 8

Sections 2 and 8 are very important provisions and should be retained. The ability for unions and employers to communicate on an equal footing with members and employees respectively is critically important.

Expedited Arbitration

The parties to a collective agreement should be able to contract out of Division 4 of the *Code* by agreeing to their own forms of Expedited Arbitration and their own list of expedited arbitrators within their collective agreement. This will ensure that the parties are able to mutually determine their arbitration processes and which arbitrators will be empowered to interpret their collective agreement and resolve their disputes. This is fundamental to the arbitration process.

In the alternative, amendments should be made to section 104 of the *Code* to reflect the fact that the expedited process is rarely appropriate to deal with issues of complex collective agreement interpretation. Options for amendment could include: (a) a means to challenge the appropriateness of expedited arbitration for the dispute at issue; (b) legislating expedited arbitration decisions to be without precedent; and/or (c) providing for Board appointed case management before an arbitrator is appointed.

Appeals of Arbitration Awards

The current review options for arbitration decisions are inconsistent with the review options available for other decisions under the *Administrative Tribunals Act* and the principles set out by the Supreme Court of Canada in cases such as *Dunsmuir* and *Vavilov*.

The current standard of review in section 99 of the *Code* is amorphous, difficult to apply, and inconsistent with modern standards of review. Under the existing section 99 standard of review, unreasonable decisions of arbitrators stand so long as there is no denial of natural justice and the decision is not inconsistent with the principles expressed or implied in the *Code*. This is not fair to the parties and generally brings the administration of justice into disrepute.

Section 99 should be replaced with the modern standard of review articulated by the Supreme Court of Canada, where reasonableness (with due deference to the arbitrator) is the general standard, subject to the exceptions set out by the Court in *Vavilov*.

By adopting this standard, the *Code* would be brought into line with modern conceptions of the standard of review.

Further, the appeal process should be more streamlined, with an appeal from an arbitrator's decision being heard by a panel of the Board, and from there a party may apply for judicial review, with no option or requirement for reconsideration by the Board. Under this proposal, section 100 would be repealed, and all reviews of arbitrators' decisions would go directly to the Board.

In the alternative, if the current structure of sections 99 and 100 is maintained, it would be appropriate for the Committee to recommend amendments to clarify the differing jurisdictions of the Board and the Court of Appeal. At present, parties frequently spend additional time and resources filing applications with each of the Board and the Court of Appeal in order to meet timelines and deal with the uncertainty of jurisdiction.

Section 68

Section 68(1)(a) is unwieldy and does not strike the right balance between the rights of employers and the rights of unions. Often the strike or lockout occurs years after notice to commence collective bargaining was given. By then, many managers who were employed on the date on which notice to commence bargaining was given are no longer employed by the employer, and therefore the employer's ability to legitimately operate during a labour dispute is unfairly curtailed. The result is that the replacement worker provision operates in a manner that is not fair for employers, as unions are able to bring disproportionate economic pressure on employers.

We propose that section 68(1)(a) be replaced with the following: "who is hired or engaged after the date that is 6 months before the issuance of strike or lockout notice", or such other reasonable period of time as the Committee may determine is appropriate.

Strikes, Lockouts, and Picketing

We were disappointed that proposed changes are being considered to the definition of strike in the *Code* without consultation with stakeholders, notwithstanding this ongoing review process.

In light of those proposed changes, it is essential that there be no changes to the *Code*'s provisions

concerning common site picketing or ally designations. These provisions serve to protect employers who are not involved in a labour dispute, which has become even more important as a result of the expansion of the definition of strike.

The current provisions are working, as evidenced by the resolution of recent labour disputes. The current provisions effect a careful and appropriate balance between employers and unions and allow all parties to exert appropriate economic pressure to conclude a negotiated collective agreement.

We recognize, however, that the Committee may give consideration to the issue of cyber picketing, including how and when remote work may be struck or locked out. We are of the view that no changes to the *Code* are required in order to deal with this issue, as the *Code*'s current provisions are sufficient. The Board is already dealing with this issue through its jurisprudence.

If the Committee is considering *Code* changes to deal with this issue, the Committee should bear in mind the realities of remote and hybrid work, the need to balance the rights of employers, employees, and unions, and the duties set out in section 2 of the *Code*.

Further, if cyber picketing is addressed by the Committee, the Committee should ensure that the impact of cyber picketing is not greater than the impact of physical picketing. This is particularly important for Universities that have multiple points of access, multiple worksites, and multiple employers. Just as a single physical picket does not have the effect of shutting down an entire University, a single cyber picket should not be able to have such an impact.

Consolidation

There have been significant changes in workforces, workplaces, and in the economy in British Columbia over the years. This means that bargaining unit structures that may have been appropriate at one point in time are simply no longer appropriate, as the dividing line between different groups of employees diminishes or is eliminated through technological advancements and other changes.

The *Code* does not reflect this reality, as it makes it extremely difficult for employers with multi-bargaining unit structures to establish that that structure is no longer appropriate in order to consolidate. The hurdle of establishing that there is industrial relations instability is incongruous, as it seems to disadvantage those employers who strive to resolve workplace disputes and issues in a cooperative manner with their bargaining agents. Further, it is also incongruous that the Board would permit bargaining unit structures that are no longer appropriate to be maintained, only because those structures were set in place in some cases many decades ago. The need to prove industrial relations instability is inconsistent with the duties set out in section 2 of the *Code*.

The *Code* should contain provisions that allow employers and unions in multi-bargaining unit structures to obtain consolidations by showing that the existing bargaining unit structure is inappropriate. This, rather than industrial relations instability, should be the driving factor in consolidation applications, as this will make for harmonious and stable labour/management relations.

Essential Services

As institutions of higher learning, Universities are the lifeblood of the new economy, and are essential to support a growing and sustainable economy in British Columbia. Section 72(1)(a) of the *Code* should be amended to cover teaching, research, and supporting activities at Universities. The education of University

students should not be put in jeopardy due to a labour dispute, and neither should important research projects, many of which represent years and years of important work (much of which benefits society significantly), be jeopardized due to a labour dispute. Many projects may include time sensitive research or specimens. If this research or these specimens are not properly maintained during a labour dispute, years of research may be lost. This essential maintenance may include IT support of research and maintenance of labs.

Further, the current test in section 72 does not contemplate an essential services designation where there may be a risk to the health, safety, or welfare of animals. Universities often contain worksites with live animals, which may suffer harm or death if left unattended in the event of a strike or lockout. The *Code* should be amended to permit an essential services designation where there may be a risk to the health, safety, or welfare of animals.

The essential services provision of the *Code* should also require the maintenance of security, including IT and cyber security. Universities possess information that may be highly sensitive, confidential, and/or personal. CSIS has warned about potential foreign interference with Canadian Universities. Under provincial privacy legislation, Universities have an obligation to maintain the security of personal information in their possession, some of which includes sensitive data from many sectors and other employers due to ongoing research partnerships. In order to meet these obligations, IT and cyber security should be deemed an essential service.

Funding

While outside the provisions of the *Code*, the Committee should recommend increased funding for the Board in order to support reduced wait times for mediation and adjudication.

RCC RETAIL COUNCIL OF CANADA CCCD CONSEIL CANADIEN DU COMMERCE DE DÉTAIL

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21 March 2024

Panel Members
Labour Relations Code Review Panel

By email to: lrcreview@gov.bc.ca

Dear Michael Fleming, Sandra Bannister and Lindsie Thomson,

Retail is Canada's largest private sector employer. Over 323,000 (February 2024) residents of British Columbia work directly in the retail industry. Retail impacts hundreds of thousands of related jobs in wholesale, transportation, information technology, legal and accounting professions. The sector annually generates $14 billion (2022 data) in wages and employee benefits for British Columbians. Core retail sales (excluding vehicles and gasoline) in B.C. were $73 billion in 2023. The Retail Council of Canada is a not-for-profit industry-funded association that represents small, medium and large retail businesses in every community across the country. As the Voice of Retail™, we proudly represent British Columbia storefronts in all retail formats, including department, grocery, pharmacy, convenience, specialty, discount and independent retailers, as well as online merchants and quick-service restaurants.

The Retail Council of Canada (RCC) is writing on behalf of our industry to provide our perspective on potential changes that could be considered to the Labour Relations Code.

1. Card-check certification and small workplaces

   For workplaces, including small retail businesses, with less than 12 full-time workers, 55% is a low bar for a certification process, particularly as the certification process is no longer democratic (as the individual does not get to make a confidential choice). The result is sometimes unrepresentative of the majority of workers. Our view is that there are two options available:

   - Increase the percentage of cards required for certification in small workplaces (perhaps to 67%, e.g., two-thirds) and require that the employees be employed at the workplace at the time the application for certification is made.
   - Alternatively, institute a minimum size of unit for card check certification and return to the secret ballot vote for smaller workplaces.

2. Replacement workers: management

   RCC represents the vast majority of grocers and pharmacies. Our experience in respect of replacement workers is coloured by the COVID-19 pandemic, and the difficulties in keeping distribution centres, grocery stores and pharmacies operating during the pandemic.

The current restriction on management eligible as a replacement worker (that they must ordinarily work at the location where they are being deployed as a replacement worker) ignores modern realities in the retail industry. Many management employees have responsibilities at multiple workplaces: for example, a manager may be responsible for multiple stores; a meat, dairy or bakery department manager is frequently responsible for multiple stores; more management employees are working from home post-pandemic; and moreover, the number of management employees has dropped dramatically over recent decades.

RCC asks the panel to encourage government to broaden the definition of management by not limiting eligible management employees to only those who ordinarily work at that store – at a minimum for retailers of groceries and pharmacy products. In the event of a labour disruption, this would ensure some part of a distribution network and a few stores are open to provide essential goods to customers.

Please do not hesitate to reach out with any questions or for further information. Thank you for your time and consideration of our input.

Yours truly,

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Seaspan Shipyards' Submission to the Section 3 Panel Reviewing the British Columbia Labour Relations Code

March 2024

On behalf of:

Vancouver Shipyards Co. Ltd.

Vancouver Drydock Co. Ltd.

Victoria Shipyards Co. Ltd.

We are pleased to make this submission to the Labour Relations Code Review Panel (the "Panel"), established under Section 3 of the *Labour Relations Code* (the "*Code").*

While the Panel has requested submissions on "any changes to the *Code* you believe are necessary in order to properly reflect the needs and interests of workers and employers in the context of our modern economic realities", this submission urges the Panel to "*not*" recommend any changes to the definition of "strike" in the *Code* as suggested by the Provincial Government on March 11, 2024 in Bill 9-2024. If passed, the Government proposed change to the definition of "strike" will allow provincially regulated unionized employees to honour picket lines of federal employers, or employers from other provinces, and such refusal will not constitute an illegal strike, even if it occurs during the term of a collective agreement. This will reverse the decision of the British Columbia Labour Relations Board in the Vancouver Shipyard case in relation to the Canadian Merchant Service Guild ("Guild") strike in 2022.

Effectively, this change will allow employees to engage in a mid-contract withdrawal of service – a situation the Code has historically protected against. It thereby impacts the necessary balance between employees' right to associate, unionize and engage in strike action and periods of industrial peace. The protection of industrial peace where withdrawals of services are not permitted has long been the primary tenet of labour relations in Canada.

EXECUTIVE SUMMARY

The purpose of the *Code* is to promote and maintain industrial peace through a fair and equitable collective bargaining regime, which includes the statutory requirement against strikes and lockouts during the term of a collective agreement.

The current definition of "strike" in the *Code* is unique in Canada in that it allows certain employees to engage in a mid-contract withdrawal of services. This provides BC trade unions, which are certified to employers with multiple bargaining units, a significant power when negotiating a collective agreement, that other trade unions across Canada do not have. But, given that the *Code* also has restrictions on picketing, the labour relations balance is maintained as only the employer directly involved in the labour dispute is properly impacted.

A change to the definition of "strike" that would expand the right of certain employees to withdraw their services mid-agreement, and affect operations of employers uninvolved in a labour dispute,

will drastically impact BC's ability to attract and retain business. BC is already providing generous protection to employees and trade unions in its labour relations system. This amendment to the definition of "strike" will expand these rights to unnecessary lengths and will have a significant, direct, negative and lasting impact on innocent employers and their employees.

INTRODUCTION

As we will more fully explain in the present submission, we are of the view that the definition of "strike" in the *Code* is an intrinsic component of the British Columbia labour relations regime founded on the balance of employees' rights to bargain collectively and to take collective action, and the predictability of potential work stoppages, which should not be altered without careful consideration as to the entire labour relations regime and its impact on stakeholders.

During the Fall of 2022, the application of the *Code* with respect to the protection of uninvolved employers from third-party picketing was tested during the strike that involved the Guild and Seaspan Marine.

Vancouver Shipyards Co. Ltd. ("VSY") saw its entire operation shut down due to picketing by members of the CMSG, a federal bargaining unit, at VSY's main place of work. Approximately 1,000 unionized specialized workers of VSY refused to cross the picket line and were without work or pay (which included lost pension contributions) for six weeks. This created, amongst other disruptions, losses and delays to ongoing projects of the federal shipbuilding program.

During the same labour dispute, operations at Vancouver Drydock Co. Ltd. ("VDC") were also shut down due to the CMSG picketing near the entrance of its workplace on the Vancouver waterfront. Approximately 180 unionized workers of VDC refused to cross the picket line and were left without work and pay (which included lost pension contributions) for five weeks. The shutdown of VDC's operations caused a loss of revenue, a loss of current and future business, and impacted VDC's reputation as a reliable ship repair facility.

Both VSY and VDC heavily rely on suppliers and contractors to perform work associated with shipbuilding and ship repair. Most of these are provincially regulated, and many are unionized. As a result of the shutdowns of VSY and VDC, these external providers were also adversely impacted. The ripple effects of the shutdowns, which were beyond the control of VSY and VDC, were felt by many businesses and their employees.

VSY and VDC, while wholly owned by Seaspan ULC, operate as independent employers engaged in provincial jurisdiction businesses that are vastly distinct from the marine transportation business of Seaspan Marine, which operates in the federal jurisdiction. VSY and VDC are also not in a position to compel Seaspan Marine to accept terms or conditions of employment or have any role whatsoever to play in collective bargaining. In this labour dispute, they were innocent bystanders, and nonetheless adversely impacted by a conflict they were not involved in.

Hence, this caused the uninvolved parties to consider any relief measures applicable to them to minimize the harmful effect of third-party picketing over which they had no control. To that end, VSY applied to the Labour Relations Board (the "LRB") for a declaration that employees refusing to cross the CMSG federal picket line were engaging in an illegal strike.

VSY argued that its employees were engaging in an illegal strike, as they were refusing to cross a federal picket line, not a picket line that was permitted under the *Code*. This argument was based on the definition of "strike" in the *Code*, which excludes from its definition a cessation of work caused by the employees' refusal to cross a picket line "permitted under this *Code*".

The LRB initially disagreed with this argument and found that the VSY employees had the right to honour the federal picket line without engaging in an illegal strike. On reconsideration, the LRB overturned the original decision and held that the *Code* only protected unionized employees in BC honouring picket lines regulated by the *Code*. In other words, picketing which emanated from a provincially regulated labour dispute.

However, the reconsideration came too late; months after the labour dispute had been settled and well after VSY and VDC experienced the shutdowns described above. Although the LRB reconsideration was of no assistance for this matter, critically, it settled the law for future inter-jurisdictional labour disputes in alignment with the current legislation.

VSY Background

In the last few years, VSY has developed one of the most modern shipyards in North America. VSY's facilities include a major steel forming hall, a large fabrication and assembly hall, and a 20,000 square foot, totally enclosed, environmentally controlled paint facility where entire vessels are sheltered for preparation and painting.

VSY currently operates from its primary site at 2 and 50 Pemberton Avenue, in North Vancouver, British Columbia. VSY is the West Coast home of the Government of Canada's National

Shipbuilding Strategy (the “NSS”), and currently 100% of VSY's work is related to contracts awarded under the NSS.

Under the NSS, VSY has been tasked to build the new federal non-combat fleet of vessels for the Royal Canadian Navy and Canadian Coast Guard (“CCG”). VSY has already delivered to the CCG three Offshore Fisheries Science Vessels and has been awarded contracts to build two Joint Support Ships and one Offshore Oceanographic Science Vessel, which are all currently under construction. Future awarded projects include one Polar Icebreaker vessel, the flagship of the CCG’s fleet, and sixteen Multi-Purpose Vessels.

Since the start of the NSS, VSY has invested significantly in upgrading its facilities to accommodate the construction of the new NSS vessels. More importantly, VSY had to invest and innovate to develop a specialized shipbuilding workforce to meet the standards of the Government of Canada. VSY’s NSS work has created thousands of jobs both locally and nationwide. Shipbuilding skills are different from those required for ship repairs. Thus, VSY has worked with its unions to train and certify a critical mass of their workforce to sustain the NSS projects. At the same time, VSY is rebuilding an industry of building complex ships by Canadians for Canadians by developing a pipeline of maritime talent. The economic ripple effect of such investment is felt from coast to coast to coast.

VSY has now contributed more than $5.7 billion to Canada’s GDP through its shipbuilding and repair, refit and maintenance activities and is expected contribute an additional $20.7 billion to Canada’s GDP through 2035.

As of January 31, 2024, there were over 2,700 employees working for VSY. Of these, approximately 1,600 are unionized.

VSY is provincially regulated and is certified by five trade unions who form a “poly party” council of unions for the purposes of collective bargaining and administration of the collective agreement (the “VSY Poly Party”).

VDC Background

VDC completes regular maintenance and repair on vessels for both government and commercial clients, including vessels owned by the CCG and BC Ferries. They also complete short-term repair and maintenance projects on a range of smaller cruise ships, barges, tugboats, and fishing vessels.

VDC's shipyard and drydock operations are located at 203 East Esplanade Avenue, in North Vancouver, British Columbia.

As of January 31, 2024, there were approximately 250 employees working at VDC. VDC is provincially regulated and is certified with two bargaining units.

One certification is by the Marine Workers' & Boilermakers' Industrial Union, Local No. 1 for the maintenance of the site and its facilities (the "Core Group"). The other certification is with five trade unions who form a "poly party" council of unions for the purposes of collective bargaining and administration of the collective agreement (the "VDC Poly Party").

VSL Background

VSL is in the business of ship repair and modernization of all types of sea vessels. VSL's shipyard operations are located at 825 Admirals Road, in Victoria, British Columbia, on land owned by Public Services and Procurement Canada (the "PSPC"), and known as the Esquimalt Graving Dock.

VSL is currently engaged with the Canadian Government on two long-term refit and modernization projects; the Victoria In-Service Support Contract (VISSC) to modernize the Royal Canadian Navy's current fleet of submarines, and the Halifax-Class Work Period (HCWP) to maintain and modernize Canada's West Coast-based Halifax-class frigates.

VSL is provincially regulated and is certified by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Lodge 191 (the "IBB"). As of January 31, 2024, there were approximately 1,000 employees working at VSL, 800 of which are unionized trade workers.

There are two large cranes on the site which, when needed for work done by VSL, are operated by employees of PSPC. PSPC also provides other services, including compressed air, electricity and fresh water, which require PSPC employees to work at the Esquimalt Graving Dock. PSPC is federally regulated and certified by the Public Service Alliance of Canada ("PSAC").

Seaspan Marine

Seaspan ULC is a federally regulated marine transportation company ("Seaspan Marine"), which owns and operates a fleet of tugs and barges engaged in towing, shipdocking, and vessel escort

services on the West Coast of British Columbia, as well as offering certain services to and from the West Coast of the United States. Seaspan Marine is federally certified and its two main unions are the Canadian Merchant Services Guild, which comprises a bargaining unit of licensed mariners, and the International Longshore and Warehouse Union Local 400 (“ILWU”), which comprises a bargaining unit of unlicensed mariners.

Other parts of Seaspan Marine’s operations are also federally certified in smaller bargaining units related to barge maintenance and operations and shoreside administrative personnel. In total, there are three (3) other bargaining units represented by the ILWU and MoveUp.

Seaspan Marine operates primarily from 10 Pemberton Avenue, North Vancouver, British Columbia.

The only public road access to VSY and Seaspan Marine is at the intersection of McKeen Avenue and Pemberton Avenue in North Vancouver. This single access point provides access to the buildings located at 2, 10 and 50 Pemberton, the Seaspan Marine docks, and VSY shipyard and vessels launch dock. All VSY and Seaspan Marine employees use this access point to enter the location to attend work.

Guild Strike August 2022

On August 25, 2022, the Guild commenced a legal strike against Seaspan Marine. On August 26, 2022, the Guild set up pickets at the corner of McKeen Avenue and Pemberton Avenue, the single public access point to Seaspan Marine and VSY.

As a result, union members of the provincial VSY Poly Party refused to cross the federal picket line and did not report for work. This essentially shut down all operations at VSY, despite it being party to a current collective agreement and not being in a labour dispute. An interim order was quickly obtained from the LRB requiring the VSY Poly Party members to return to work, pending final adjudication and determination on VSY’s application alleging the refusal of the employees to attend work was an illegal strike.

On September 1, 2022, the LRB issued a bottom line decision, finding that the refusal of the VSY Poly Party members to cross the Guild picket line was not an illegal strike. The next day, VSY employees stopped reporting to work due to the presence of the CMSG picket lines. On September 15, 2022, the LRB issued its full reasons.

VSY immediately applied for reconsideration. VSY had to wait until December 30, 2022 for the LRB to issue a decision on the reconsideration application.

In the meantime, picketing ceased on October 14, 2022 after the Guild and Seaspan Marine reached a tentative agreement. In total, the strike and picketing lasted approximately seven weeks and affected most marine operations at Seaspan Marine, all shipbuilding and ship repair operations at VSY and VDC, and to a lesser extent some activities of VSL. In each instance, the unionized employees did not attend work, refusing to cross the Guild picket line, and were not paid.

It is of note that in this context, the hundreds of employees of VSY and VDC who refused to cross the Guild picket lines had no access to employment insurance benefits. Therefore, without any source of revenue, this highly specialized workforce, impacted by a strike that was not theirs, had to turn to alternate sources of employment. Considering the considerable investment made to recruit, retain, train, and certify the workforce, employees moving on to other employment poses a risk to the sustainability of the employer's commitments to the NSS program and its customers and creates substantial employment turnover cost.

Employees struggled with their financial obligations during this time. There were reports of people not being able to face their financial commitments, such as paying their bills, rent and mortgages.

LABOUR RELATIONS BOARD APPLICATION

The VSY application to the Labour Relations Board alleged that employees refusing to cross the Guild picket line were engaged in an illegal strike.

The definition of "strike" in the *Code* is as follows:

> **"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 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;

VSY alleged that the Guild's picketing could not be "picketing that is permitted under this Code" since the federal bargaining unit picketers were not covered by the *Code*. Therefore, any refusal to cross the picket line by VSY employees was not covered by the exceptions to the definition of strike, and thus was an illegal strike.

The Reconsideration Panel of the Labour Relations Board unanimously agreed with this proposition, and held that the phrase "permitted under this Code" referred to picketing that is expressly permitted by the *Code* or under some authority conferred by the *Code*. The Board summed up their decision as follows:

> In sum, considering the Phrase in its entire context and in its grammatical and ordinary sense harmoniously with the scheme and objects of the Code, and the intention of the Legislature, we accept that the Legislature intended to create an exception to the definition of strike only to the extent that the impugned conduct occurred as the direct result and for no other reason than picketing that is expressly permitted by the Code or under some authority conferred by the Code. As a result, we are not persuaded that there is any ambiguity in the Phrase.

Thus, pursuant to the Board's ultimate decision, employees do not have a right to honour picket lines of federal unions, or any other picket line unless the picket line is in relation to a labour dispute governed expressly by the *Code*, i.e. by a trade union with a provincial certification under the *Code*.

Had the Labour Relations Board made this finding in the original application in August 2022, VSY and VDC would have been able to continue to operate and would not have suffered irreparable delays to the NSS projects, in addition to reputational and other damages. But most importantly, employees would have been able to continue to work and not suffer loss of pay due to a work stoppage to which they were not a party.

As the law is now clear, the current definition of "strike" provides for a limited right of provincial unionized employees to honour picket lines that are established in the context of a provincially regulated labour dispute. This definition, in the context of Part 5 of the *Code*, in and of itself forms a complete system unique to BC that already favours labour.

Impact on VDC

On September 8, 2022, the Guild began picketing near the entrance to VDC. As a result, the unionized VDC employees refused to cross the picket line and attend work. This picketing also impacted a second VSY location which is adjacent to the VDC shipyard.

VDC and VSY made an application to the BC Supreme Court for an injunction against the Guild and its members to have the pickets removed. They were unsuccessful in obtaining this injunction.

Ultimately, the picketing remained and VDC was unable to obtain relief through the Labour Relations Board, due to the original decision of the Board in the VSY case, or with the Court as the picketing was deemed lawful. VDC was unable to operate for approximately five weeks. During this period its unionized employees did not receive pay, VDC lost revenue, its reputation was impacted, and it lost business.

Had the Board correctly interpreted the right to strike at the first instance, VDC would have been able to obtain relief - the same relief available to provincial employers subject to picketing by employees of another provincial employer who either share a common site, or perform work at that employer's location. VDC and its employees suffered unnecessary harm, despite being entirely uninvolved in the Guild's labour dispute with Seaspan Marine.

PSAC Strike April – May 2023

On April 19, 2023, PSAC began a strike against the Government of Canada, which included picketing at the Esquimalt Graving Dock. This resulted in a majority of VSL employees refusing to cross the PSAC picket lines and report for work.

VSL immediately applied to the LRB for declarations and orders against the IBB alleging they and their members were engaged in an illegal strike, relying on the VSY reconsideration decision. VSL obtained an Order on April 22, 2023 requiring the VSY employees to cross the picket line and attend work. This was based on the clear law after the sound decision of the Reconsideration Panel in the VSY case. This is exactly the situation that the *Code* is meant to protect and which would be unwound with untold harm across the province were the definition of "strike" to be changed to allow for honouring any picket line, not just those "permitted under this Code."

POLICY CONSIDERATIONS

The Reconsideration Panel in the VSY case discussed at some length the policy considerations of the respective positions before it. There are additional policy considerations that we feel are relevant to any consideration of changing the current definition of strike in the *Code,* that were not expressly referred to by the Reconsideration Panel.

Common Site Relief

When one examines the *Code* provisions on strikes and picketing, it becomes clear that the Reconsideration Panel's decision on the definition of strike was not only correct, but accords with labour relations policy both provided in Part 5 of the *Code* itself and generally.

Section 2 of the *Code* expressly provides that the Labour Relations Board, and others, must exercise any powers or duties under the *Code* in a manner that "minimizes the effects of labour disputes on persons who are not involved in those disputes", and "ensures that the public interest is protected during labour disputes".

When two unionized employers, both provincially regulated, share common property for their workplaces, the employer not involved in the labour dispute is provided full relief from any picketing of the struck employer.

Section 65(3) of the *Code* provides:

> 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.

By virtue of Section 65(3), employers not involved in the labour dispute have an avenue for relief in situations where their workplaces are impacted by picketing relating to other employers who have workplaces on the same site. This is not a discretionary power, the Board must provide this relief.

Any change to the definition of strike that would allow provincially regulated employees to honour any picket line (federal, from another province, or other) would mean a BC employer sharing a

site with a federal employer would have no similar avenue of relief. This is what occurred in the time between the original panel decision and the reconsideration decision – the employers had no avenue of relief. In its current form, the definition of strike does no more than provide the same type of relief for BC employers from federal (or other) picketing, in the same way the *Code* protects BC employers impacted by picketing by another BC employer.

The right to honour a provincial picket line is already a marked departure from all other Canadian jurisdictions. A change that would broaden this right would only serve to widen that departure. It would create unfairness, and inconsistency, in that only by virtue of sharing a site with another employer that happens to be federally regulated, an employer would be without means to continue its operation during a labour dispute it is not involved in.

Such a change would be inconsistent with Section 2 of the *Code*. In addition, it would be inconsistent with the direction provided by the Provincial Government to this Panel. The Panel's February 2, 2024 Letter to the Community expressly states:

> We have been directed to assess the issues canvassed with and by stakeholders with consideration of section 2 of the *Code* (Duties under the *Code*) and with a view to relevant developments in other Canadian jurisdictions.

The Information Bulletin published by the BC Provincial Government on its website on February 1, 2024, put it in these terms:

> The panel will also consider relevant developments in other Canadian jurisdictions to ensure B.C.'s labour laws are consistent with labour rights and protections enjoyed by other Canadians.

In all other jurisdictions, Canadian employers and their employees can be assured of the ability to continue to operate when the employer is not itself in a labour dispute with its union. BC should continue to only allow the limited right to honour a picket line when such action is directly aimed at the struck employer and not uninvolved employers and their employees.

Picketing

One of the arguments the VSY Poly Party made in the VSY case is that the proper regulation is of picketing, and not the response to picketing. The problem with this argument is that even if that were so, it results in the same problem, being that merely because a provincially regulated

employer is being affected by federal picketing it cannot obtain the same relief if the picketing is by a provincially regulated union.

The *Code* regulates picketing. Thus, in contrast to federal labour law and other Canadian jurisdictions which do not regulate picketing in their labour statutes, provincial trade unions are limited in where and when they can picket. Provisions of Part 5 form a cohesive system that carefully balances the powers at play to deal with labour disputes.

The *Code* provides further protection for uninvolved employers impacted by secondary picketing or common site picketing. In these cases, provincial trade unions do not have the same common law rights to picket as unions in jurisdictions where the picketing is not statutorily regulated. Their picketing must fit within the confines of part 5 of the Code, considering that the Code provides employees of other bargaining units with a right not to cross picket lines and protects the trade unions against action relating to the expected impacts of picket lines. This balancing of rights and obligations can only work as an entire, cohesive labour relations system aiming to maintain industrial peace while minimizing the harmful effect on third-parties.

Other jurisdictions have taken a different approach to picketing. For example, the *Canada Labour Code* does not regulate the right to picket. Instead, limitations have emerged from the law of Torts, giving the trade unions an arguably broader right to picket than under the *Code*. However, the quid pro quo is that there is no right to refuse to cross a picket line. On the contrary, employees not in a position to strike legally will be forced to cross picket lines and report to work, and, as a result, providing an uninvolved employer access to a remedy to ensure the maintenance of its activities.

Any change to the right of BC employees to honour any picket line will undoubtedly compromise the intricate balance of the *Code* and leave certain provincially regulated employers without a remedy despite the impact on their operations. This is inconsistent with the purposes of the *Code*, and will result in BC becoming a less attractive place for businesses to operate.

Other Canadian Jurisdictions

The Provincial government has already presented a bill proposing a change to the current definition of strike to give all provincially regulated union employees a blanket right to refuse to cross any labour picket line, regardless of its origin or purpose. Arguments in support of this change are mostly made on the basis that “forcing” a union employee to cross a picket to attend work, when they are uninvolved in the labour dispute, is somehow abhorrent or unconscionable.

No other jurisdiction in Canada allows employees to honour a picket line while proclaiming that there shall be no strike or lockout during the life of the collective agreement.

When presented with this dichotomy, courts and tribunals in other jurisdiction have often struggled with reconciling these seemingly contradictory provisions.

In other jurisdictions, it has been repeatedly found that the withdrawal of services during the term of a collective agreement is contrary to the objective of maintaining harmonious labour relations. That objective is achieved by allowing for predictability of a potential work stoppage. An ad-hoc strike unrelated to the bargaining relationship between a union and employer is contrary to the *Code* objectives, and constitutes an illegal strike.

Despite arguments under the *Canadian Human Rights Charter* ("Charter"), *Charter* values arguments, and pleas that honouring picket lines is important to demonstrate solidarity and support for the striking union members, labour relations boards, and all levels of courts in Canada have consistently held that there is a trade-off between collective rights and protections obtained through certification and collective bargaining, and the prohibition on mid-contract work stoppages.

It is, after all, the purpose of the *Code* to promote and maintain industrial peace through a fair and equitable collective bargaining regime, which includes the statutory requirement of "no strike, no lock-out" during the currency of the collective agreement[1]. In this context, there is no doubt that allowing employees to withdraw services during the term of their collective agreement is contrary to the promotion of harmonious labour relations or employment in economically viable businesses.

In the federal context, the Canada Industrial Relations Board (the "CIRB") has, since at least 1999, consistently held that refusing to cross a picket line is an illegal strike. The CIRB has also consistently ordered federally regulated employees to return to work, despite the continued picketing taking place.[2]

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[1] *SCC Construction Ltd. v. U.A.*, 1987 CarswellNfld 199.

[2] *British Columbia Terminal Elevator Operators' Association*, [1999] CIRB No. 6; *Westshore Terminals*, [2000] CIRB No. 61; *British Columbia Terminal Elevator Operators' Association*, [2007] C.I.R.B.D. No. 14; *Seaspan ULC v. ILWU*, 2023 CIRB 1094.

In a case which arose from the Guild strike in 2022, the CIRB summarized the balancing of interests necessary to the labour relations scheme, and the importance of labour relations stability and predictability of labour disputes. In *Seaspan ULC and ILWU, Local 400*, 2023 CIRB 1094, the CIRB held, in the context of whether the refusal to cross a picket line was an illegal strike:

> Section 89 of the *Code* sets out the specific steps and time frames needed to acquire the right to strike. These steps include giving a notice to bargain, attempting to bargain collectively and – if bargaining is not successful at this stage – filing a notice of dispute with the Minister of Labour and giving a strike notice. These steps are tied to collective bargaining time frames and are meant to ensure a certain degree of predictability to work stoppages.
>
> The overarching purpose of the prohibition against mid-contract strikes and the requirements of section 89 of the *Code* is to maintain labour relations stability and predictability of labour disruptions. The trade-off for the prohibition against mid-contract strikes is that every collective agreement must contain provision for the final settlement of disputes relating to the interpretation and application of the collective agreement without a work stoppage (see section 57 of the *Code*).
>
> Under the *Code's* framework, when disputes arise during the term of the collective agreement, the proper recourse is to file a grievance. When disputes arise during collective bargaining, the parties must follow the timelines in the *Code* to acquire the right to strike or lockout. Allowing a carve-out to the prohibition against mid-contract strikes in the circumstances of this case could jeopardize the statutory objectives of the *Code* for the same reasons expressed by the FCA in *Grain Workers' Union, Local 333 v. B.C. Terminal Elevator Operators' Association*.

Other jurisdictions have approached this question in a similar manner. The Court of Appeal of Newfoundland expressed their view in non-equivocal terms in *Pitt Atlantic Constructions Ltd.*[3]:

> We are in substantial agreement with the conclusion of the learned trial judge and his reasons therefor. We are all of the opinion that a strike, defined in Section 2(w) of The

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[3] *Pitts Atlantic Construction Ltd. v. Construction & General Labourers', Rock & Tunnel Workers' Union, Local 1208*, 1984 CarswellNfld 41.

> Labour Relations Act as including a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert in accordance with a common understanding, occurs when employees, in combination or in concert, refuse to cross a picket line of another union in respect of another employer and is illegal notwithstanding any provision to the contrary contained in the collective agreement. [emphasis added]

Whether based on the definition of "strike" in the appropriate statute or recognizing the unlawful act of a trade union to encourage or induce a breach of contract between an innocent employer and its employees, courts and boards outside of BC have generally concluded that the refusal of employees to cross a picket line constitutes a breach of the express prohibition against striking during the currency of a collective agreement[4].

Maintaining the current position on illegal strikes is consistent with Section 2 of the *Code* and the Provincial Government's direction to the Panel on relevant developments in other Canadian jurisdictions to ensure that BC labour laws are consistent with labour rights and protections enjoyed by other Canadians.

No Expansion of the Right to Withdraw Services

The withdrawal of services has long been a necessary part of the collective bargaining process, with a necessary balance between periods of industrial peace (i.e. during the term of the collective agreement) and periods where parties are able to exert economic pressure by ceasing work to force the acceptance of terms of a new collective agreement. However, withdrawal for other purposes has always been properly distinguished and always held to be unlawful.

As the Federal Court of Appeal in *Grain Workers*'[5] rightly stated:

> …the purpose of the impugned provisions of the Code is not to restrict freedom of expression, but to prevent the negative consequences of mid-contract strikes, particularly the economic disruption caused by unpredictable work stoppages. The prohibition of mid-

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[4] See for example: *PCL Constructors Canada Inc. v. P.S.A.C.*,1997 CarswellYukon 69, *SCC Construction Ltd. v. U.A.*, 1987 CarswellNfld 199, *Construction Labour Relations Assn. (Alberta) v. C.E.P., Local 501A*, 2001 ABQB 950, *Fraser Papers Inc. (Canada) v. IWA-Canada*, 2002 NBBR 170.
[5] *Grain Workers*' *Union, Local 333 v. B.C. Terminal Elevator Operators' Assn.*, [2010] 3 F.C.R. 255

> contract strikes is an important component of the Code's attempt to balance equitably the interests of labour and management.
>
> […]
>
> I agree with the Board that the harmful effects of the expressive activity, the work stoppage, are immediate and independent of any particular meaning being conveyed. Production or services cease as soon as employees refuse to work, regardless of whether they are refusing to cross a picket line, attending a political protest, or simply defecting en masse to go fishing.

Withdrawing services in the face of a picket line put up by another union on strike against another employer is essentially the same as a political protest. It is a showing of support and solidarity with other union members in their "fight" with another employer. It is not to pressure their own employer to agree to the terms of a new collective agreement. Expanding the right to withdraw services in such situations would upend the labour relations balance completely.

The proposed change to the definition of strike expands the right of employees to withdraw services during the currency of the agreement without regard for a *quid pro quo*. There is no equivalent consideration to the expression of union solidarity that would provide employers with a similar right or advantage. Employers would be unduly influenced by external factors in the management of their own labour relations, whether it be due to their physical location, the labour jurisdiction of their neighbours or the duration of their collective agreements. In practice, this provides the trade unions with tremendous power without allowing the employers with any means to restore the balance. It would be an acceptance that trade unions, on the basis of one labour dispute, can impact the entire labour market.

Adverse consequences of the expansion of this right will greatly impact employees who want to honour a picket line in that they are prevented from providing work and receiving pay for reasons completely outside their control. In the current economic context, such uncertainty about accessing employment is obviously problematic. Similarly, the uninvolved employer, in addition to being unable to operate and the obvious loss of business and/or revenue, will have to bear the cost of unexpected work stoppages, and risks losing its specialized workforce in situations in which it has no input and no way to intervene to settle the dispute.

Industrial Stability

The BC Board has historically and consistently maintained a preference for single large bargaining units because they objectively support industrial peace in the workplace. These single large bargaining units are favoured over multiple smaller bargaining units to provide stability and predictability in the bargaining cycle.

This recognition follows other functions of the *Code* to support this fundamental tenet of the BC labour relations system. This is where the Code also recognizes practices to facilitate the certification of employees by providing employers certainty with respect to withdrawal of services. The same objective is pursued by the creation of an arbitration forum to address disputes during the life of the collective agreement. Similarly, restrictions on strikes or lockouts are meant to place both trade unions and employers on an equal stance to exert economic pressures on the other to entice the renewal or execution of a collective agreement.

The purported change to the definition of strike creates an inequality in the system: giving labour an advantage for which employers have no remedy and can only suffer the consequences without providing its employees with any direct or indirect gains.

As the 2022 Guild strike demonstrated, should the proposed definition of strike be changed, it is very likely that the strike of any of the Seaspan Marine bargaining units, however small they are, will result in the complete and unexpected shut down of VSY operations for the duration of the labour dispute. As was the case in 2022, the operation of VDC and VSL could also be shut down for an indeterminate amount of time.

Hence, VSY would not only be subject to its own collective bargaining cycle and potential labour pressure, but also the bargaining cycle of all the bargaining units of Seaspan Marine. The potential to be shut down at any moment, depending on the labour relations of another employer, creates an untenable uncertainty in an employer's capacity to manage and organize its work. That is notwithstanding the impact on employees who would be without revenue for an undefined period of time depending on the acceptance of terms and conditions of employment that would benefit them and over which they have no control.

As mentioned, the 2022 shutdown of operations placed thousands of employees out of work because of the strike of one bargaining unit of Seaspan Marine. Without the protection afforded by the current definition of the *Code*, VSY, VDC and VSL would be unfairly penalized, by having their operations shutdown due to federally regulated labour disputes. This would place them in a

position where any commercial commitments would be dependant on the labour relations of other units completely outside of their control. No employers can properly operate in those circumstances.

SUMMARY

British Columbia should not distance itself further from other Canadian jurisdictions when it comes to allowing unionized employees to refuse to report to work during the term of their collective agreement. The right to honour a picket line is already enshrined in the *Code* along with a carefully balanced system for regulating picketing that would not exist for picket lines from another jurisdiction.

Protection for uninvolved employers who happen to share sites, or are otherwise impacted by picketing when not in a labour dispute themselves, should continue.

We respectfully submit the definition of “strike” in the *Code* should remain as it is, and this Panel should not recommend any changes to it. Should the Provincial Government pass the proposed amendment to the definition of “strike” in Bill 9-2024, this Panel should recommend that the Government change the definition back to what it currently is.

Seaspan Shipyards
Per:

Brent Hale
Chief Administrative Officer

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SUBMISSION TO

BC LABOUR RELATIONS CODE REVIEW

Advocating for Sectoral Certification and Bargaining to Enhance Labour Relations

Submission by Service Employees International Union Local 2,
Brewery, General & Professional Workers' Union,
SEIU Local 2 ("SEIU Local 2")

Prepared for:
Labour Relations Code Review Panel

March 22, 2024

MARCH 22, 2024

Labour Relations Code Review Panel
British Columbia Ministry of Labour

email: lrcreview@gov.bc.ca

RE: Submission to Labour Relations Code Review Panel
Submission by SEIU Local 2

Advocating for Sectoral Certification and Bargaining to Enhance Labour Relations

Dear Panel Members,

SEIU Local 2 is a private sector trade union representing thousands of workers across British Columbia. Our Justice for Janitors and Beverage Workers Rising campaigns have successfully organized to improve wages, benefits, and job security for workers across Canada. Our Justice for Janitors model has been particularly successful here in British Columbia through organizing across the city of Metro Vancouver to increase stability and raise industry standards.

Our submission herein reflects on the need for British Columbia to modernize our Labour Relations Code and adopt a sectoral model of organizing and collective bargaining. Our comments and examples are drawn from our recent experiences amongst decades of organizing and representing thousands of workers. These submissions speak directly to the nature of private sector service work in our province and the immense challenges workers in these industries face organizing a union and collectively bargaining under the current Code.

Considering the given timeline for this year's review, this written submission is intentionally concise. However, SEIU Local 2 is prepared to provide a more detailed verbal presentation to discuss the nuances and the depth of our proposal at the Panel's convenience.

Our member leaders will be attending the following in-person public meetings:

- April 5 - Vancouver
- May 1 - Kelowna
- May 2 - Victoria

Respectfully,

Alicia Massie
Coordinator of Campaign Research and Capital Strategies
SEIU Local 2

CONTENT

INTRODUCTION

TOWARDS A MODERNIZED LABOUR FRAMEWORK IN BRITISH COLUMBIA

SEIU Local 2, a national trade union, champions the rights of a diverse array of private sector workers throughout British Columbia. With a decade-long commitment to our Justice for Janitors campaign, we have successfully represented thousands of janitors and property service workers across the province. Additionally, as the home of the Brewery, Winery, and Distillery Workers' Union Local 300, we advocate for employees in some of BC's most recognized breweries, wineries, and private liquor stores, including Granville Island Brewing, Molson-Coors, Mission Hill Winery, and Sleeman Breweries.

In this submission, we commend the Panel's dedication to updating BC's labour laws to better reflect the evolving dynamics of work and align with national standards for worker rights. We particularly acknowledge the positive impact of the 2018 Labour Relations Code amendment, which enhanced job security for workers through extended successorship protections against contract flipping—a crucial safeguard we urge you to maintain and strengthen.

The core of our submission is a call for the adoption of sectoral certification and bargaining within the Labour Relations Code. This represents a pivotal step towards modernizing BC's labour laws, ensuring they adequately address the needs of today's workforce and economy. By advocating for this change, SEIU Local 2 aims to forge a labour landscape that is fair, equitable, and responsive to the challenges faced by workers in an increasingly fragmented and precarious employment market.

LIMITATIONS OF ENTERPRISE BARGAINING

The current labour landscape in Canada, particularly within the private sector, presents significant challenges for workers in precarious industries who are seeking to unionize. The dominant enterprise bargaining model, while effective in traditional, single-employer workplaces, falls short in addressing the needs of today's diverse and fragmented workforce. This submission outlines the limitations of the current model and proposes sectoral bargaining as a necessary reform to ensure fair and effective collective bargaining for all workers.

Enterprise bargaining, as it stands, allows a single union to represent a bargaining unit comprised of employees at a single workplace under one employer. This model disproportionately benefits scenarios where large numbers of workers are employed by a single employer at a single site, such as factories. However, it significantly disadvantages workers in sectors characterized by small workplaces, franchises, single locations within multinational corporations, and subcontracted industries.

Industries such as retail, fast food, domestic work, and those under the broad umbrella of app-based employment face substantial barriers to unionization under the current model. The enterprise bargaining system does not accommodate the modern workforce's complexity and fragmentation, where workers may be employed across multiple locations, under different employers, or within franchise models that limit direct employer accountability.

IML - A BUILDING BLOCK APPROACH

The principles enshrined in the Island Medical Laboratories Ltd. (IML) decision[1] have served as a cornerstone for ensuring that workers in British Columbia have access to collective bargaining. SEIU Local 2 recognizes and applauds the Board's careful IML decisions for their forward-thinking "building block approach" to union certification and bargaining unit determination. This approach has historically facilitated access to collective bargaining for a broad spectrum of workers while ensuring economic stability, aligning with our ongoing commitment to support and empower those in precarious employment.

However, the dynamic nature of our modern economy, characterized by the decreasing size of individual workplaces and the rise of non-traditional forms of employment such as gig work, presents new challenges that were unanticipated at the time of the IML decision. These developments underscore the need for a labour code that not only reflects the current economic realities but also anticipates the future landscape of work. The IML decision, while groundbreaking at its inception, now requires a thoughtful update to maintain its relevance and effectiveness in achieving the objectives it sought to establish.

The shift toward a more fragmented and flexible workforce necessitates a reconsideration of how we approach the organization of labour. The traditional enterprise-specific model of collective bargaining, as currently guided by the IML framework, must evolve to accommodate the intricacies of sector-specific dynamics. SEIU Local 2 advocates for the adoption of sectoral bargaining in British Columbia to address these challenges. Sectoral bargaining, unlike traditional models, allows for negotiations and agreements that cover all workers within a specific sector, regardless of their employer. This model is particularly suited to today's labour market, where workers often face similar conditions, challenges, and employers' practices across an entire sector.

1 Island Medical Laboratories Ltd., BCLRB B308/93 (Reconsideration of IRC. No. C217/92 and BCLRB No. B49/93)

To sustain the foundational objectives of the IML decision—supporting workers' access to collective bargaining and promoting industrial stability—it is imperative that we transition to a framework that is not confined to the constraints of individual enterprises. Updating the labour code to facilitate sectoral bargaining would represent a significant step forward in ensuring that all workers, especially those engaged in precarious and non-traditional employment, have access to collective bargaining.

The endurance of the IML decision across varying government administrations attests to its fundamental importance in the landscape of British Columbia's labour relations. Yet, to preserve its objectives in the context of the contemporary and future economy, we must embrace a broader perspective. Moving from an employer-specific to a sector-specific approach in labour relations will not only uphold the spirit of the IML decision but also enhance its applicability and impact, ensuring that the labour code remains a living document responsive to the needs of British Columbia's workforce.

CASE STUDIES AND CHALLENGES

PRIVATE SECTOR JANITORS: THE DILEMMA OF SMALL WORKPLACES

In the context of enterprise bargaining, private sector janitors exemplify the significant limitations faced by workers in small groups. Typically employed by a single employer, janitors are dispersed across various locations in a city, often in teams as small as 1-3 individuals per commercial building. This fragmentation severely undermines their collective bargaining power, rendering unionization efforts notably challenging. The isolation of these workers, coupled with their geographical dispersion, starkly illuminates the necessity for a bargaining model that consolidates the collective strength of workers, regardless of their numbers at individual sites. Addressing this issue not only aligns with the principles of fair labour practices but also ensures that all workers, irrespective of their employment scale, can effectively participate in collective bargaining.

SEIU Local 2's central bargaining action committee, with worker representatives from 8 individual employers

EXAMPLE: CENTRAL TABLE BARGAINING FOR METRO VANCOUVER JANITORS

In 2023, a landmark achievement was realized when SEIU Local 2's janitorial members across Metro Vancouver united to engage in centralized negotiations with eight distinct private janitorial firms. This collaborative effort, marked by the voluntary participation of the employers, underscored the effectiveness of a centralized bargaining approach. By consolidating negotiation efforts, not only were resources more efficiently utilized, but it also facilitated the establishment of industry-wide standards. This collaboration leveled the playing field, granting smaller companies a fair chance to compete within the market.

The outcome of this united effort was significant: over 2,500 commercial janitors in Metro Vancouver are now beneficiaries of shared wages, more standardized work conditions, and benefits arrangements. This agreement streamlines contract implementation and management for both employers and the union, representing a significant stride towards more equitable and efficient labour relations in the janitorial sector.

However, SEIU Local 2's success in this domain remains an incredibly narrow slice of the private-sector janitorial workforce. Our Metro Vancouver agreements include only those workplaces where the commercial buildings are large (over 75 000 sq ft) and explicitly exclude outdoor retail malls, standalone retail stores, banks and other commercial properties. As a result, janitors working for private companies that are outside of this scope of large commercial properties are still without representation. Without a statutory framework like sectoral bargaining, the ability to organize and represent such workers remains extremely limited.

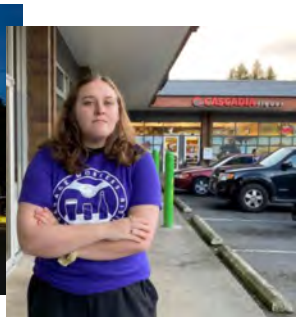
CASE STUDIES AND CHALLENGES

FRANCHISE OPERATIONS: NAVIGATING FRAGMENTATION AND AUTONOMY

Franchise operations introduce unique challenges to unionization, primarily due to the structural complexities and operational independence within the franchise model. While operating under well-known brand names like "McDonald's" or "Starbucks," individual franchise locations may have different owners. This, at times further complicated when locations are owned by the same entity but registered as separate companies, poses significant hurdles to unionizing efforts. Employers often argue for each unit's independent operation, necessitating separate certification and bargaining processes. This fragmentation strategically weakens worker power and complicates unionization. Recognizing and addressing these challenges is crucial for ensuring that the labour code reflects the realities of modern work environments, facilitating fair and effective collective bargaining across all sectors.

Addressing the complexities of franchise models requires a strategic approach beyond simple procedural changes such as refining the common employer application process. While these updates might offer short-term solutions, they don't tackle the fundamental issue: the fragmentation and operational independence within franchises. Sectoral bargaining provides a comprehensive solution. By focusing on the entire sector rather than individual franchise units, sectoral bargaining effectively neutralizes the challenges posed by varying ownership structures. This approach not only eliminates the need for incremental procedural adjustments but also promotes a unified framework for equitable and effective labour representation. It ensures that all workers, regardless of their employer's business structure, have access to robust collective bargaining.

EXAMPLE: CASCADIA LIQUOR STORES



Throughout 2023 and into 2024, SEIU Local 2 is engaged in a concerted campaign to unionize employees across the private sector liquor store industry. While there are over 600 private liquor stores in British Columbia, we have only been able to identify 8 certified bargaining units, 5 of which are part of our recent campaign.

A significant milestone of this campaign was the application for certification by employees at three Cascadia Liquor locations on Vancouver Island, spearheaded by SEIU Local 2's efforts to have these certifications recognized collectively by the Labour Relations Board.

Cascadia Liquor, part of The Truffles Group, operates eleven private liquor stores on Vancouver Island, with each of the unionized locations sharing not only the Cascadia brand but also a common registered office, owner, and director. Despite this unified branding and operational structure, The Truffles Group has contested the collective bargaining efforts, asserting that each store functions independently based on distinct business registrations.

We contend this stance is challenged by the reality of Cascadia Liquor's operations, which exhibit clear signs of an integrated business model. This includes uniform labour relations practices and the seamless movement of staff between stores, underpinned by centralized scheduling and payroll systems. Despite Cascadia Liquor's public image and operational integration, such pushback against a unified bargaining unit underscores the complexities faced by employees seeking to unionize within such franchise models.

CASE STUDIES AND CHALLENGES

FRANCHISE AND UNIONIZATION: STRATEGIC CLOSURES AS A RESPONSE TO UNIONIZATON

The journey toward unionization within franchise operations has been fraught with significant challenges, as recent experiences by SEIU Local 2 and other private sector unions have highlighted. Notably, the past year has seen a troubling trend where umbrella corporations have opted to close locations shortly after workers have successfully unionized. This pattern emerged starkly with 2023 seeing the closures of two unionized private liquor stores, Berezan Liquor Store and Bottle Jockey, and was similarly observed at Browns Crafthouse in downtown Vancouver, following UFCW's unionization efforts. Furthermore, multiple Starbucks locations in Vancouver, represented by USW, experienced closures after employees certified their locations.

VANCOUVER SUN

Local News / Local Business / Business

Vancouver Starbucks employee who organized for union now out of a job

Fired Starbucks employee alleges her dismissal was retaliation for union organizing work.

Denise Ryan

Published Nov 18, 2023 • Last updated Nov 20, 2023 • 4 minute read

154 Comments

These closures, occurring after successful union certifications, suggest a deliberate strategy to discourage unionization by demonstrating the potential for job loss. While officially attributed to poor store performance or lease expiry, the timing of these closures raises questions about the true intent, casting a shadow over the collective bargaining rights of workers and sending a chilling message across the franchise network. Such actions imply that the pursuit of improved working conditions through unionization could jeopardize employment security. It is imperative to acknowledge these tactics on the part of employers and advocate for enhanced protections for workers and the adoption of sectoral bargaining. Such reforms would offer a more equitable framework for labour relations, ensuring that workers' efforts to unionize are met with fairness rather than punitive measures and termination of employment.

EXAMPLE: BOTTLE JOCKEY'S CLOSURE

Bottle Jockey, a private liquor store in Burnaby, British Columbia, was owned and operated by the Joey Restaurant Group. In February 2023, workers at Bottle Jockey achieved certification with SEIU Local 2. However, on the eve of scheduled collective bargaining in May 2023, SEIU Local 2 was informed of Bottle Jockey's decision to shut down and terminate all employees, citing the expiration of their lease as the cause.

SEIU Local 2 challenges Joey Restaurant Group's justification of this closure, presenting evidence suggesting the action was a direct response to the recent union certification, aimed at preventing further unionization efforts within the wider business network owned by the same proprietors of Cactus Club and Joey's restaurants. Notably, the employees affected by the closure were not offered positions at any other locations within the corporation.

This incident stands as one example among many of the obstacles workers face in securing their rights to unionize within the franchise business model, with SEIU Local 2 viewing Bottle Jockey's actions as a breach of labour law protections against unfair practices. It underscores the critical need for legislative reforms to ensure workers are shielded from such retaliatory closures and job loss, advocating for a labour market that supports equitable unionization and collective bargaining processes.

TACKLING STRUCTURAL CHALLENGES AND ELEVATING THE RIGHTS OF VULNERABLE WORKERS

The current landscape of our labour relations framework reveals two significant issues: structural barriers that prevent effective unionization and diminished bargaining power for those who manage to unionize. The prevalent enterprise bargaining model falls short for workers in precarious situations or those navigating the complexities of fragmented modern industries, effectively denying them a pathway to collective bargaining rights.

The backdrop against which these challenges unfold is equally important. Sectors such as retail, fast food, and domestic service, characterized by some of the lowest wages and highest instability in British Columbia, disproportionately employ the most vulnerable populations. According to Ivanova and Strauss (2023)[1], precarious employment often involves part-time work, lacks benefits, offers no job security, and provides low wages. This issue is acutely felt among young immigrant women in BC, who are significantly represented in these sectors. The Understanding Precarity in British Columbia Project is set to publish findings showing that young women, particularly those under 24, and immigrants, who comprise 30% of the workforce in food service and private liquor stores, face heightened risks of precarious and exploitative working conditions. This figure starkly contrasts the national average for immigrants in similar occupational groups and underscores the gender pay gap, with women, especially immigrant women, earning less than their male counterparts.

1 See Iglika Ivanova and Kendra Strauss, 2023, "But is it a good job? Understanding employment precarity in BC".
https://policyalternatives.ca/publications/reports/it-good-job

This demographic insight underscores a pressing social equity challenge. The intersection of precarious employment with the vulnerabilities of young, immigrant women, stresses the urgent need for labour reforms that go beyond economic measures to tackle structural barriers to unionization and the broader impacts of precarious work on social equity and justice.

The push for sectoral bargaining transcends the call for improved collective bargaining rights; it represents a critical move towards rectifying systemic inequities within our labour market. By ensuring all workers, especially those in precarious conditions, have a voice and the power to negotiate fair working conditions, we pave the way for a labour framework that champions fairness, equity, and dignity for all.

PROPOSAL FOR SECTORAL BARGAINING

A PATH FORWARD

In response to the systemic barriers currently impeding effective unionization and equitable labour relations, we advocate for the adoption of sectoral bargaining. Sectoral bargaining, recognizes the diversity of the modern workforce and proposes a collective bargaining framework that can encompass multiple employers, workplaces, and potentially various unions across entire sectors. Sectoral bargaining is not a novel concept; we have several instances of sectoral bargaining here in BC and across Canada, notably in the education, healthcare and construction industries[1]. In addition, sectoral bargaining has seen successful implementation across several European countries and is gaining momentum in other jurisdictions such as California and New Zealand, providing valuable precedents.

Fast-food workers in California rallying for state bill AB 257 - The FAST Recovery Act

1 For a complete review of Sectoral Bargaining in Canada, see Sara Slinn's 2020 paper, "Broader-Based and Sectoral Bargaining in Collective-Bargaining Law Reform: A Historical Review"

SECTORAL BARGAINING

1 BROADENING THE SCOPE OF COLLECTIVE BARGAINING

Sectoral bargaining extends beyond traditional enterprise models by facilitating negotiations across entire sectors—defined by geographic, occupational, or industrial parameters. This broadened approach allows for a more flexible recognition or certification process than the current single-workplace-based certification prevalent in traditional labour law regimes. A prime example of this model's flexibility is seen in the Canada's federal jurisdiction's Status of the Artist Act, which forgoes card-based certification in favor of representing artists' associations proving their representativeness within the sector.

Under a sectoral model, negotiations typically occur between labour and employers' councils, culminating in collective agreements that establish absolute terms. This model is particularly pertinent for sectors where employees struggle to effectively collectively bargain, offering a viable pathway to unionization and fair bargaining, regardless of the sector's homogeneity or the geographical scope of its application.

2 EMPOWERING WORKERS ACROSS INDUSTRIES

Sectoral bargaining has the potential to update British Columbia's labour relations for our modern economy by:

- Enabling collective bargaining across industries, ensuring a fair negotiation environment for workers and multiple employers.
- Counteracting the fragmentation of bargaining units, especially in industries dominated by precarious, part-time, or temporary jobs.
- Setting industry-wide standards to reduce labour disputes and foster equitable competition among employers.

Our increasingly service-oriented and interconnected economy demands labour laws that empower all workers, including those in marginalized employment situations, with a collective voice to advocate for improved conditions, fair wages, and additional protections from job loss.

A PREVIOUS LABOUR CODE REVIEW

THE BAIGENT READY MODEL

The concept of sectoral bargaining has previously been explored by British Columbia's Labour Code Review Panel, notably through the Baigent Ready model proposed in 1992. Crafted by John Baigent and Vince Ready, this model aimed to enhance bargaining power in small workplaces and sectors traditionally underrepresented in labour negotiations. It sought to build on the historical successes of resource-based and healthcare unions, incorporating broader-based and sectoral bargaining principles.

We contend that the Baigent Ready Model, albeit with necessary updates to reflect contemporary labour market realities, offers a solid foundation for instituting sectoral bargaining in British Columbia today. Modernizing our labour code through such a lens promises a balanced and comprehensive strategy to empower diverse workforces and bolster protections for vulnerable workers.

Further supporting this move towards sectoral bargaining are the insights of academics and legal scholars, including the noteworthy contribution by Sara Slinn and Mark Rowlinson. Their paper, "Bargaining Sectoral Standards: Towards Canadian Fair Pay Agreement Legislation,"[1] inspired by New Zealand's legislative framework, provides a compelling blueprint for implementing sectoral standards within Canada. This approach is particularly pertinent in today's service-oriented and interconnected economy, where traditional enterprise-based bargaining models often fail to represent the collective interests of marginalized workers effectively.

Embracing sectoral certification and bargaining is about more than safeguarding workers' rights; it's a strategic move towards elevating industry standards and fostering a competitive, robust economy across our province. By adopting such reforms, we commit to a future where all workers, regardless of their employment status, have a voice and the means to secure better working conditions.

---

1 Slinn, Sara and Rowlinson, Mark, "Bargaining Sectoral Standards: Towards Canadian Fair Pay Agreement Legislation" (2022). All Papers. 349.
https://digitalcommons.osgoode.yorku.ca/all_papers/349

A PATHWAY TO IMPLEMENTATION

Considering the pressing need for labour reforms that reflect the evolving dynamics of our workforce, SEIU Local 2 advocates for the adoption of sectoral bargaining in British Columbia. Recognizing the complexity of this endeavor, we propose a structured approach to ensure its successful implementation:

INITIATE A DEDICATED COMMISSION

We recommend the Panel endorse the formation of a specialized single-issue commission tasked with the development of a sectoral bargaining framework specific to British Columbia's needs. This commission should operate with a clear mandate to explore and propose a robust model for sectoral bargaining.

LEVERAGE EXISTING FRAMEWORKS

The commission's efforts should be informed by proven models, notably the Baigent-Ready model and the Fair Pay Agreement proposal by Slinn and Rowlinson. These existing frameworks offer valuable insights and principles that can be adapted to suit BC's unique labour landscape.

ENGAGE IN FOCUSED CONSULTATION

It is crucial that the proposed model undergoes a public consultation process, allowing for input and feedback from key stakeholders, including workers, employers, unions, and industry experts. While this inclusive approach is essential for crafting a viable model, it is important to structure these consultations to be forward-looking and solution-oriented. The goal is to refine and adapt the model based on practical insights and current realities, avoiding the pitfalls of revisiting historical debates or becoming mired in the myriad of potential options. This streamlined consultation will pave the way for actionable outcomes, directly contributing to the model's successful implementation.

TIMELINE FOR IMPLEMENTATION

With an aim to actualize sectoral bargaining reforms, we urge the Panel to advocate for the implementation of the commission's refined model by the end of 2025. This timeline provides a realistic window for consultation, model development, and legislative action, marking a significant step towards modernizing our labour laws.

CONCLUSION

STRATEGIC MODERNIZATION OF LABOUR RELATIONS CODE

This year marks a critical juncture for modernizing the Labour Relations Code of British Columbia. The recent mandate letters to Minister of Labour Harry Bains and Parliamentary Secretary of Labour Janet Routledge, as outlined by the Office of the Premier, underscore the critical need for our labour laws to adapt to the contemporary workplace, ensuring the stability of labour relations and the effectiveness of collective bargaining rights.

The call for sectoral bargaining is not just a recommendation; it's a response to the growing consensus among workers and unions for a system that better reflects the realities of today's economy and the diverse needs of British Columbia's workforce. This reform stands as a cornerstone for creating a more inclusive, equitable, and respectful labour environment across all sectors.

SEIU Local 2 stands ready to contribute to this dialogue, offering our insights and experiences to the Panel. Our commitment is to a constructive and collaborative review process that promises to uplift the entire workforce of British Columbia. We see a bright future for labour relations in our province—one that fosters fairness, equity, and dignity for all workers. It is with optimism and urgency that we call upon the Panel to recommend the adoption of sectoral bargaining, laying the groundwork for a labour code that is both progressive and responsive to the needs of our time.

Teamsters Local 213

Affiliated with the International Brotherhood of Teamsters, Teamsters Canada and the Canadian Labour Congress.

Legal Services Department

490 East Broadway, Vancouver, B.C. V5T 1X3

Bryan W. Savage
Shaw Zandnia

Telephone: (604) 876-5213
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EMAIL TRANSMITTAL SHEET

DATE: March 22, 2024

EMAIL TO: Labour Relations Code Review Panel
ATTENTION: Sandra Banister, K.C., Michael Fleming, Lindsie Thomson
EMAIL: lrcreview@gov.bc.ca

FROM: Bryan Savage, Director of Legal Services
EMAIL: Bsavage@teamsters213.org

NUMBER OF PAGES TRANSMITTED (including covering sheet)__ 7 ___

RE: Labour Code Review – Submission 2024

MESSAGE:

Enclosed please find the Union's Labour Code Review submission 2024.

IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL Celia at Phone: 604.876.5213 Fax: 604.874.6459
Original to be: Mailed Kept on File x Couriered

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Teamsters Local 213

Affiliated with the International Brotherhood of Teamsters, Teamsters Canada and the Canadian Labour Congress.

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March 22, 2024

Via email: lrcreview@gov.bc.ca

Labour Relations Code Review Panel

Attention: **Panel Members:**
Sandra Banister, K.C.
Michael Fleming
Lindsie Thomson

Dear Sirs/Mesdames:

Re: Labour Code Review – Submission 2024

Teamsters Local 213 was originally chartered by the International Brotherhood of Teamsters as the "construction" local in BC in 1946. Since that time, Local 213 has expanded its jurisdiction to include representation of many different industries throughout the province. Local 213 is recognized by the Board as one of craft unions appropriate to represent employees in the construction industry.

1. The Teamsters' craft certification, where dependent contractors are employed, reads:

   > truck drivers and operators of motor vehicles and motive equipment related to heavy construction, and warehousemen including dependent contractors.

The Teamsters' submission will focus on certain new issues that have arisen with regards to "double breasting" in the construction industry.

1. In the 1996 First Interim Report by the Construction Industry Review Panel, the Panel defined double breasting as "the practice of an employer operating simultaneously in both the union and non-union sectors." The Panel recommended that any issue arising from double breasting could be dealt with by the parties through the collective bargaining process.

2. The issue that has arisen since then is that double breasting in the construction industry is now increasingly involving a second unionized employer that is organized on a non-craft basis. Craft certified construction employers are either starting new companies, or purchasing existing companies, which are then either certified or subject to a voluntary recognition agreement with an "all employee" unit.

3. In such a case, a number of issues arise that are simply not applicable to the "classic" form of double breasting. The two main issues causing problems are:

    1. The Board's policy against certifying craft and industrial units together.
    2. Voting constituency.

4. The Board's policy on not certifying industrial and craft units for the same employer in the construction industry was first enunciated in *Cicuto*, in which the Council held that non-craft certifications were appropriate in the construction industry. The policy against such hybrid systems was recently upheld *Altrad Services Ltd., 2023 BCLRB 173*.

5. While as a general rule the Teamsters support this policy, we have found that an exception must be made for the trucking component of the construction industry.

6. In the construction industry, the Teamsters have a long history of representing Owner/Operators and Dependent Contractors. This relationship has a long history of recognition by the Board.

7. The Teamsters Master Construction Agreements do not distinguish between an Owner/Operator and Dependent Contractors save and except that Dependent Contractors will be placed on a Dependent Contractor seniority list. In all other respects, these drivers are treated the same under the various collective agreements.

8. The Teamster agreements generally follow the same structure for call out of trucks:

    1. Regular employees – Those employees of the employer who operate company owned trucks.
    2. Dependent Contractors – Those Owner/Operators who have been placed on the Dependent Contractor seniority list.
    3. Owner/Operators and Subcontractors – If the individual hired is an Owner/Operator they will work under the terms and conditions of the collective agreement. If a

subcontractor is hired it is a subcontractor that is signatory to the same collective agreement.

9. There are comparatively few true trucking subcontractors in the sense of an employer who owns their own trucks and hires employees to operate those trucks. For the most part, trucking subcontractors are simply "brokers" who will hire Teamster Owner/Operator members to work for the main contractor.

10. Due to the nature of the trucking aspect of the construction industry, in practice many of the "all employee" units are in actual fact "all employee except truck drivers."

11. While the certification may include drivers, and the collective agreements may include truck driving rates and classifications, in practice the driving work is being done non-union.

12. An examination of collective agreements for non-traditional construction unions shows that such collective agreements do not include any language concerning contracting out of bargaining unit work. In practice then, the employers in these situations simply contract out the work to non-union trucking companies.

13. Traditional building trade unions with all employee construction units will often have contracting out language in their collective agreements, however, they are written in such a way that enables the Employer to contract out the trucking work.

14. For instance, Board records show a collective agreement with the following language:

    1.03 The Employer may contract out work where:

    a) he does not possess the necessary facilities or equipment.
    b) he does not have an/or cannot acquire the required manpower.
    c) he cannot perform the work in a manner that is competitive in terms of cost, quality, and within required time limits.

    3.04

    a) The Employer may engage Sub-Contractors that are under agreement to Unions that are members of the B.C. Federation of Labour or Sub-contractors that have no Union affiliation.
    b) The Employer will get the Union's permission before Sub-contracting to companies other than those above. This permission will not be unreasonably withheld.
    c) In the event a Sub-Contractor signatory to this agreement, fails to make payment of wages, or benefits and conditions as contained in this Agreement, the prime contractor shall upon written notice, by the Union, of such payroll failure, be required to make the necessary payment.

APR Contracting – IUOE

15. Once again, it must be emphasized that due to the pattern of driving work in the construction industry, most employers do not own any of their own trucks. The work is done by either Dependent Contractors or Owner/Operators. Contracting out language, like the above, may at first seem reasonable, however the practical effect of such language is the trucking work will be done non-union.

16. What this means is that in those situations, due to the Board's *Cicuto* policy, truck drivers are excluded from the benefits of collective bargaining. Employers can structure their business in such a way as to ensure that trucking work is done on a non-union basis.

17. In these situations, carving out the Teamsters craft unit from what is otherwise an all-employee unit is necessary to ensure that truck drivers have access to collective bargaining. While the Teamsters acknowledge the Board's belief that multiple bargaining units will lead to industrial instability, this belief cannot be used to trump the basic rights of employees to have access to collective bargaining.

18. Further, the issues identified in *Cicuto* concerning why the Board will not certify a combination of craft and industrial units for the same employer simply do not arise in these cases. First, and foremost, the reality is that in these situations the options are Teamsters or non-union. Where, as is the case in the trucking industry, it can be shown that a construction craft is not being represented by the industrial unit there is simply no reason to fear issues arising over allowing such "hybrid" units.

19. Nor is this a case where the Teamsters are attempting to organize piece meal over craft lines. All the Teamsters are asking for is the right to represent our members when they are not being represented by other unions.

20. While the Panel may believe that the solution to the above is simply an application by the Teamsters for a common employer declaration, the unfortunate fact is that such an application would not solve the issue.

21. As the Panel is aware, the general Board rule on bargaining rights when two unionized employers merge is for the Board to order a run-off vote where there is a doubt as to which union should represent the new bargaining unit. Typically, the Board uses the 2/3rd rule of thumb whereby if one union represents more than 2/3rd of the combined bargaining unit, no vote is necessary.

22. The issue in the construction industry is obvious when a craft union goes up against an all employee unit. By definition the all employee unit will have more members in the

unit than the craft unit. While this can be slightly ameliorated by comparing the numbers of all the crafts to the number of the all employee unit this does not end the matter.

23. A second, more insidious application of this occurs for the Teamsters. The vast majority of our members in the construction industry are Owner/Operators and are not considered employees of the Employer for purposes of such a vote. This is despite the fact that the Owner/Operators are expressly covered by the collective agreement.

24. As a practical matter, this makes the common employer aspect of the *Code* irrelevant to the Teamsters. When an employer starts up/buys an "all employee" second company they will ensure that the craft bargaining unit company will only use Owner/Operators and/or sub-contractors for their trucking needs.

25. As neither of these groups would be considered "employees" under the *Code* the Teamsters, despite the fact that they are representing members in the bargaining unit, would have no "employees" who would be eligible to vote in any subsequent election.

26. Any attempt by the Teamsters to protect the rights of our members to a hard earned collective agreement is doomed to failure by the simple fact that if we apply for a common employer, there are no "employees" in the bargaining unit. As such, a successful application will lead to the Teamsters' bargaining unit ceasing to exist.

27. What we are left with then is Employer's choosing whether the work they will be performing will be done by unionized truck drivers or non-unionized truck drivers. When work is being done by one of these companies non-union, the Teamsters are unable to organize this group due to the fact that the Employer has an "all employee" agreement with another union. Even if, as is the case here, the practical reality is that the driving work is being done non-union.

We suggest that the Code be changed to include the following:

28. In successorship or common employer situations involving at least one craft construction Employer:

    a) Where it can be shown a non-craft unit is not representing workers who perform work within the jurisdiction of one of the craft unions recognized by the Board, the Board shall order the continuation of that craft union(s) certification and/or collective agreement.

    b) Where the Employer contracts out part of the work pursuant to the collective agreements, the craft union representing the craft that has been contracted out will be, for the purposes of the *Code*, deemed to have the support of the average

number of persons working in the craft for the Employer in the previous July and August.

All of which is respectfully submitted.

Yours truly,

TEAMSTERS LOCAL 213

MoveUP:ch
2024 Labour Code Review

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Code Review Panel

c/o Labour Relations Board

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March 18, 2024

This is the submission of UBCP/ACTRA, the trade union representing performers in the film industry in British Columbia, to the Code Review Panel, ("the Review Panel"), which is seeking submissions from interested groups regarding potential amendments to the Labour Relations Code (the "Code"). This process is part of the Minister of Labour's mandate to undertake an independent review of the Code every five years.

BC Federation of Labour Submission

UBCP/ACTRA supports and adopts the recommendations made in the submission of the BC Federation of Labour to the Review Panel regarding the priorities of BC Federation of Labour members in respect of amendments to the Code.

Artificial Intelligence

UBCP/ACTRA supports in particular the call by the BC Federation of Labour for the Review Panel to establish a single-issue panel to examine the impact of artificial intelligence and automation on BC's workplaces.

The establishment of the single-issue panel would be consistent with the initiatives of the Federal government in this area, particularly the proposed Digital Charter Implementation Act, Bill C-27, which would bring into effect the Artificial Intelligence and Data Act ("AIDA"). The

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purpose of AIDA is to ensure that the design and implementation of AI systems in Canada are safe and respect the values of Canadians.

The members of UBCP/ACTRA are particularly affected by the potential impact of the growing use of artificial intelligence, perhaps more than in any other industry, and so we wish to expand somewhat on the submissions of the BC Federation of Labour.

Performers are particularly vulnerable to the use by AI systems of the "data sets" of performers, including their voices, actions behaviours, images, likenesses, and personalities (their "NIL rights"). AI systems pose a risk to all performers including job displacement, reputational harm, devaluing of their labour, and uncompensated use of NIL rights. Performers need to be able to consent to the use of their data sets by AI systems and control the use of those data sets and/or obtain compensation when their data sets are used.

While Section 3 of the Code mandates an independent panel to review the Code every five years, the current pace of AI advancement demands immediate attention. Consider the development of large language models such as ChatGPT, which was launched just over a year ago. Since then other advancements in generative AI have led to the ability to render lifelike videos from a command prompt. Waiting another five years risks overlooking critical developments and their profound impacts on employment, labour relations, and worker rights.

The rapid evolution of AI technologies over the past six months underscores the urgency of a single-issue panel on this subject. By proactively addressing the emerging challenges of AI, British Columbia can better safeguard the interests of its workers and maintain stability in industrial labour relations amidst the accelerating pace of technological change.

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Double-Breasting

In addition to the impact of artificial intelligence, UBCP/ACTRA has become increasingly concerned with the use of double-breasting by some producers in the film, television, commercial or recorded media to evade their obligations under the Code by establishing non-union companies that run parallel to their unionized subsidiaries. Because the structure of the film industry established by the Labour Relations Board in 1995 does not easily permit certification of a single producer per se, unions in the film industry are sometimes unable to prevent the movement of work from the unionized arm of a producer to the non-union arm, especially in animation and commercial media.

Recommendation 10 of the submission of the BC Federation of Labour calls for the common employer provision in the Code to be amended to remove the discretionary nature of common employer applications in construction. In Forever Girls Productions Inc, BCLRB No. B367/94, the BCLRB considered the nature of employment of actors and stunt performers in the film industry, concluding at page 9 that their employment "shares some of the unique aspects of construction employment, but without the hiring hall/dispatch system." If the Code is amended respecting double-breasting in the construction industry, that amendment should also apply to the film industry so that bargaining rights cannot be undermined.

Commercials

Again, because of the structure of the film industry, organizing in the part of the film industry that produces commercials in British Columbia is extremely difficult. This is due to the short duration of any particular commercial production and the difficulty of obtaining names of potential union members for a certification drive. Some producers also go out of their way to hide project information and performers sometimes do not know who they are actually working for. The result is that the commercial production industry in British Columbia is largely a non-union industry.

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If the Review Panel considers the establishment of a form of sectoral bargaining, UBCP/ACTRA calls for that structure to be applied to the commercial production industry.

Improving LRB Processes

We support Recommendation 13 and 14 of the BC Federation of Labour to increase the operating funding of the LRB by at least $5 million and necessary capital funding. Delay at all steps of the BCLRB's application processes is still much too long. Increased funding is necessary to provide timely access and results.

Regards,

Keith Martin Gordey
President
UBCP/ACTRA

Unifor Submission to the BC Labour Relations Code Review

March 2024

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Unifor Submission to the BC Labour Relations Code Review 2024

Unifor is Canada's largest union in the private sector, representing 315,000 workers across all economic sectors, including nearly 30,000 workers in BC. As trade union members, we inherently recognize the immense importance of ensuring workers are able to collectively organize and bargain for good pay and decent working conditions. The nature of Canada's labour market is rapidly changing, particularly through the spread of digital platforms and decentralized work, and it has become more important than ever to review whether the Labour Relations Code, RSBC 1996, c 244 (the "Code") has remained relevant to current working environments and employment relationship¬¬s.

In this context, Unifor applauds the BC government's recent efforts to address longstanding issues around workers' rights and benefits, including extending the right to unpaid job-protected parental and compassionate care leave, eliminating the liquor server minimum wage, establishing stronger protections for young workers, extending the recovery period for owed wages, and implementing paid sick leave, among other key measures. We also acknowledge the tremendous impact that the restoration of single-step certification has had upon extending the rights of collective bargaining to more workers across the province, and the other improvements to the Code as a result of Bill 30.

However, much remains to be done to protect workers, including the most vulnerable workers performing what are increasingly fragmented and non-standardized forms of labour within the private sector. Misclassification and the absence of an available broad-based bargaining scheme – especially for those engaged in precarious work and in difficult-to-organize occupations and workplaces – continue to be fundamental issues that are undermining the province's capacity to protect workers from systemic abuse, overwork and low pay, which entrench existing inequalities. In what follows, Unifor makes a number of recommendations to address outstanding issues through reforms to the Code, as well as recommendations to promote the efficient resolution of disputes brought before the British Columbia Labour Relations Board (the "Board")..

Summary of Unifor's Key Recommendations

1. Expand protections for gig workers and provide gig workers a meaningful path to unionization.
2. Create a scheme under the *Code* allowing for broad-based collective bargaining structures in the private sector.
3. Amend the *Code* to allow trade unions to apply to the Board to direct employers to provide early disclosure of employee lists and employee contact information.
4. Implement a pay equity regime in line with the federal *Pay Equity Act* and add a provision to the *Code* mandating that all collective agreements entered into after January 1, 2025, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps, including a process for arbitration of any differences.

5. Amend the *Code* to require respondents to common employer and sale of business applications to present all facts uniquely within their knowledge material to such applications.
6. Grant the Board jurisdiction to adjudicate breaches of settlement agreements concerning complaints brought under the *Code*.
7. Amend the *Code* to ban an employer's use of any employee or contractor to perform bargaining unit work during a strike or lockout.
8. Expand protections against contract flipping.
9. Extend the post-certification freeze provisions until such time as a first collective agreement is reached.
10. Amend the adjustment plan language in section 54 to provide a clear enforcement mechanism for breach of that section.
11. Allow secondary site picketing.

Recommendation 1: Expand protections for gig workers and provide gig workers a meaningful path to unionization.

Recommendations 1 to 3 of Unifor's submission go hand-in-hand. While Unifor recognizes that improvements to employment standards for gig workers under Bill 48 are matters that do not encompass the Code, Unifor maintains that any reform to employment standards aimed to protect the rapidly growing number of gig workers across the province must occur in lockstep with providing precarious workers in BC greater rights of representation and access to collective bargaining. Simply put, the employment standards reforms in Bill 48 do not address some of the key vulnerabilities faced by gig workers – including the absence of paid sick leave, overtime, and a guaranteed wage floor that meets or exceeds the minimum wage, and Bill 48 did nothing to make the right to unionize for gig workers meaningful.

Organizing gig workers presents significant practical and legal hurdles under the current scheme for certification in the Code. The work of app-based dispatch companies, which comprises a significant portion of gig work, happens across broad geographic areas, with workers attending no centralized dispatch location, or any company location at all. Compounding this problem, app-based dispatch companies experience high turnover in their workforces. As a result, gig workers and unions alike have no practical means to identify an eligible list of employees or assess an appropriate bargaining unit of employees for purposes of applying to certify a new bargaining unit to bargain collectively.

Union organizing, and the certification scheme presently in place under the Code, was designed to provide access to unionization in more traditional workplaces—in a single-location worksite with a sizeable workforce. The nature of app-based dispatch work, however, is fundamentally different and the scheme for certification under the Code is not well suited to address the changing nature of workplaces and workplace technologies that create disperse and precarious work. As a consequence, the province should adopt a new certification scheme for workers in the app-based dispatch sector that provides a meaningful path to unionization by creating means for unions and

employees to evaluate the number of workers employed by an app-based dispatch company, and an avenue for access to employee contact information in order to facilitate organizing efforts. Absent a legislative response to this issue, unions and gig workers face insurmountable obstacles in organizing and no meaningful path to access rights under the Code. Recommendations 2 and 3 in this submission support this framework.

Such reforms would recognize that gig work is quickly becoming the primary source of income for many workers across the province and gig workers should be afforded a right to organize and collectively bargaining without the significant legal and practical hurdles that presently exist.

Recommendation 2: Create a scheme under the Code allowing for broad-based collective bargaining structures in the private sector.

Possibly the most important change to address labour market inequity, and to enable large numbers of BC workers the opportunity to enjoy decent working conditions, would be to amend the *Code* to further expand collective bargaining coverage for workers in workplaces historically under-represented by unions.

Sectoral, multi-employer, and other broad-based bargaining are certainly not new concepts in Canada, and both federal and provincial governments, including BC, currently have legislation in place to support broad-based bargaining structures for workers in sectors such as construction, fisheries and the arts. Public sector bargaining structures in education and health care are also proven mechanisms for putting workers on a more even footing with employers.

Legislated rules for broad-based bargaining are absent primarily in the private sector and, in particular, for its most precarious workers and those working in difficult-to-organize sectors. According to the most recent *Labour Force Survey* data, among the 1.5 million private sector workers in BC without a union, fully one-third are found in just two industries: retail and hospitality.[1] Business strategies, the changing nature of workplaces as a result of technology, and failures of public policy have allowed this anomaly to become the norm.

The absence of a legislated broad-based bargaining scheme has also resulted in significant costs to the province. An example of the failure to implement a broad-based bargaining scheme can be seen in the BC container trucking industry where action by justifiably aggrieved drayage truckers has resulted in unexpected bargaining on a sectoral basis on numerous occasions. Each time the *ad hoc* sectoral bargaining structure of these units has become an issue, there has been significant disruption to activity at BC's ports, often the result of an undefined, unstructured, and conflict-fuelled industrial relations framework.

[1] Statistics Canada Table 14-10-0069-01

It is clear that BC's labour laws have not kept pace with the evolution of the private sector economy, or changes in the nature of workplace technologies, and it is no coincidence that workers without meaningful access to collective bargaining are highly concentrated in sectors defined by precarious work, non-standardized employment relationships and low pay. This is particularly true of the gig economy where work is inherently fragmented and a worker might operate on behalf of multiple platform companies to make ends meet. A broad-based collective bargaining scheme for traditionally difficult-to-organize sectors is as needed now as it was when it was strongly recommended by the majority of the 1992 Review Panel *Recommendations for Labour Law Reform*.[2]

Unifor's contribution to the *Changing Workplaces Review* process in Ontario proposed measures that would address the increasingly fragmented nature of work and assist precarious workers by permitting and encouraging broader based bargaining units:

> *While sectoral standards should reflect a broad community of interest between all workers, unionized and non-union, the institutions of collective bargaining must also adapt to the growing fragmentation of labour markets through the specific application of multi-employer certifications and bargaining rights. These include measures to enable organization and collective bargaining by workers in franchise operations, as well as within the growing workforce of self-employed and single dependent contractors.*[3]

Unifor recommends that the Review Panel recommend to the province a clear legal framework for amending the *Code* to support workers in fragmented, small, low-union density, or difficult-to-organize workplaces to engage in broader based bargaining in the private sector.

Specifically, Unifor recommends a legal framework for multi-employer certification and multi-employer bargaining in BC that would provide the following:

- A scheme allowing for easy access to certification for multi-employer bargaining units, both through initial certification and through variance applications.

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[2] British Columbia, Ministry of Labour and Consumer Services, Sub-committee of Special Advisers, *Recommendations for Labour Law Reform: A Report to the Honourable Moe Sihota, Minister of Labour* (Victoria: Ministry of Labour and Consumer Services, 1992) at pp 30-33.

[3] "*Building Balance, Fariness and Opportunity in Ontario's Labour Market*", Submission by Unifor to the Ontario Changing Workplace Consultation, 2015. Online: https://www.unifor.org/sites/default/files/legacy/attachments/unifor_final_submission_ontario_changing_workplaces.pdf.

- This scheme should compel multi-employer bargaining where a multi-employer bargaining unit exists.
- Importantly, an element of the 1992 Review Panel recommendations that Unifor does *not* endorse is the suggestion that a broad-based bargaining scheme would only apply to sectors where the average number of employees of an employer is less than 50, or in sectors that are historically underrepresented. While Unifor acknowledges that smaller workplaces pose a barrier to unionization, and there is an important need to address historic underrepresentation of workers in certain sectors, any scheme for broad-based bargaining should apply in *every* sector.

If the province intends to adopt a new framework or model for broad-based bargaining that departs from the recommendations of the 1992 Review Panel, certain elements of any broad-based bargaining scheme must apply, including:

- Employer neutrality
- Guaranteed union security, i.e., automatic dues check-off
- Respect for fundamental workers' rights, including the right to strike
- Unrestricted bargaining table expansion
- Access to dispute settlement

Recommendation 3: Amend the *Code* to allow trade unions to apply to the Board to direct employers to provide early disclosure of employee lists and employee contact information.

Unifor recommends that the *Code* be amended to allow unions to apply to the Board to seek direction that an employer must disclose a list of employees in a proposed bargaining unit if it has the support of 20 per cent of the workers in the proposed bargaining unit. Once that threshold is reached, an employer should be required to disclose an employee list and employee contact information, including names, addresses, phone number and email addresses, to the bargaining agent engaged in organizing efforts.

While the *Code* was amended in 2019 to allow the Board to make declarations for provision of employee lists, Bill 30 did not implement a scheme to allow unions to apply for such information if a certain threshold is met.

Given that access to collective bargaining is a constitutional right of Canadians, it is imperative that disclosure of employee contact information be obtained at a 20% threshold.

To account for the privacy interests of affected employees, and to ensure fairness to employers, such an amendment should be tailored to require unions to only use and retain such information for a specified period of time before being required to demonstrate renewed support. Additionally, unions should be required to include an "unsubscribe" feature in all communications to employees. The requirement to provide information under this provision should be timely and be accompanied by requirements for an audit

mechanism instead of just accepting employer information without question. The Board should be conferred the jurisdiction to address any complaints under such provisions.

This particular amendment would ensure that unions could provide workers with information where a threshold level of interest in unionization has been demonstrated. This would not give unions an unfair advantage. Rather, it would give unions a fair opportunity to provide workers with access to information to permit them to make informed decisions about their democratic rights, regardless of whether those decisions are made in support of or in opposition to unionization.

This recommendation is particularly important for workers in sectors or industries that are traditionally difficult-to-organize, and those working in the new sector of gig work.

Recommendation 4: Implement a pay equity regime in line with the federal Pay Equity Act and add a provision to the Code mandating that all collective agreements entered into after January 1, 2025, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps.

According to Statistics Canada, the province of British Columbia has the second highest gender wage gap in Canada (after Alberta), with women earning 16% less than men in hourly wages during 2023. The true extent of the gender pay gap is substantially larger when total annual income is taken into account, with women in BC making 26% less than men in average annual income during 2021.[4]

While the recent implementation of the *Pay Transparency Act*, SBC 2023, c 18, mandates employers to prepare and submit a report on payroll data related to the gender pay gap, the *Act* contains no provisions requiring employers to close the gap.

The pay transparency rules in BC, which will be phased in over the next three years, fall significantly short of the *Pay Equity Act*, SC 2018, c 27, s 416, introduced by the federal government in 2018 and implemented in 2021. The *Act* requires federally regulated employers to establish and periodically update a pay equity plan that identifies and eliminates gaps between predominantly male and predominantly female classes of jobs. Employers who fail to adhere to the new rules are subject to a range of administrative monetary policies based on the severity of the infraction.

What this has effectively meant is that some workers in BC will see gender-based wage gaps narrow as federally regulated employers in the province implement the new pay equity regime, while the majority of workers will merely experience less wage secrecy since employers have few incentives to reduce any gender-based wage gaps that are identified. Unifor recommends that the BC government follow the lead of the federal government and implement a robust pay equity regime, which mandates employers to

[4] Statistics Canada Table 11-10-0239-01

identify predominantly male and female job classes, calculate differences in compensation, and increase compensation for predominantly female job classes that fall short of their male counterparts.

Belonging to a union and setting wages through collective bargaining tends to reduce the gender wage gap, although differences remain. The most recent *Labour Force Survey* data for January 2024 reveals that, in BC, the hourly gender wage gap was 6% for workers with union coverage, compared to 18% for those without union coverage.

While it may take some time to implement a comprehensive pay equity regime in the province, unions have the capacity to bargain for the elimination of gender-based wage gaps now. Therefore, in addition to the need for provincial legislation in line with the federal *Pay Equity Act*, the *Code* should be amended to include a provision requiring that all collective agreements entered into after January 1, 2025, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps, including a process for independent arbitration of any differences.

Recommendation 5: Amend the Code to require parties to common employer and sale of business applications to present all facts uniquely within their knowledge material to such applications.

Currently under the *Code*, there is no statutory requirement that parties to common employer (section 38) or sale of business (section 35) applications be compelled to present or disclose at a hearing all facts within their knowledge that are material to such applications. This circumstance imposes significant legal and practical hurdles on trade unions in bringing such applications.

The practical hurdle for unions is that they may only be aware of a limited amount of information concerning the transaction or relationship between companies at the time of filing such applications, and may have no means of acquiring information about such matters that are squarely and uniquely within the knowledge of the parties to a transaction or the companies involved.

The *Code* should be amended to impose a reverse evidentiary onus on responding parties to applications made under sections 35 and 38 of the *Code*. Similar requirements on common employer and sale of business applications are found in sections 1(5) and 69(13) of Ontario's *Labour Relations Act, 1995*, SO 1995, c 1, Sch A:

> **1 (5)** Where, in an application made pursuant to subsection (4), it is alleged that more than one corporation, individual, firm, syndicate or association or any combination thereof are or were under common control or direction, the respondents to the application shall present at the hearing all facts within their knowledge that are material to the allegation.

...

> **69 (13)** Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall present at the hearing all facts within their knowledge that are material to the allegation.

Full pre-hearing disclosure, both of particulars and relevant documents, is necessary to achieve the purposes set out in section 2 of the *Code*. Imposing a reverse evidentiary onus on responding parties to section 35 or 38 applications would add efficiency to proceedings, ensure fairness in the hearing process for trade unions, ensure the Board has before it all relevant materials to dispose of such applications on their merits, and encourage settlement of disputes. Absent a reverse evidentiary onus, unions are more likely to require the direct assistance of the Board to acquire pertinent information to such applications, which can be time-consuming and contrary to the orderly and expeditious resolution of the dispute.

An example of the pressing need for this change to the *Code* comes from the drayage trucking industry. The Office of the British Columbia Container Trucking Commissioner (the "Commissioner") recently released a request for submissions on a consultation process addressing, among other things, proposed changes to rules implemented under the *Container Trucking Act*, SBC 2014, c 28, that would address common employer issues.[5] The Commissioner is proposing implementing requirements that employers in the industry must disclose information concerning "Related Persons" of employers, including those that act as the "Directing Mind" of related entities. This initiative is being taken by the Commissioner to address the rampant sub-contracting out of work between related employers intended to undermine drayage truckers' employment conditions and collective bargaining rights.

Unfortunately, this issue is not unique to the drayage trucking industry, and legislative initiative is required to ensure the Board is agile enough to adequately deal with common employer and successorship situations, to adequately address the mischief and damage being done to workers in the province where employers undermine bargaining rights through complex corporate arrangements. Implementing similar requirements to sections 1(5) and 69(13) of Ontario's *Labour Relation Act*, *1995* would further the *Code*'s purpose under section 2(e) of promoting conditions favourable to the orderly, constructive and expeditious settlement of disputes.

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[5] Office of the British Columbia Container Trucking Commissioner, *2024 CTS License Reform Proposed Changes*, January, 2024. Online: https://obcctc.ca/wp-content/uploads/2024/01/2024-CTS-Licence-Reform-Proposed-Changes-FINAL.pdf.

Recommendation 6: Grant the Labour Relations Board jurisdiction to adjudicate breaches of settlement agreements concerning complaints brought under the Code.

A feature that is absent from the *Code* is the jurisdiction of the Board to hear complaints that a party to a settlement agreement concerning an application brought under the *Code* has breached that settlement agreement. This circumstance occurs where a settlement agreement has been reached without the intervention of the Board in the issuance of a consent order under Section 133 of the *Code*. The law in British Columbia currently requires parties to go before the British Columbia Supreme Court to make and resolve such complaints.

Requiring trade unions and employers to use the traditional court system to resolve these types of disputes is costly, time-consuming, and drains limited judicial resources.

Evaluating whether a party has breached a settlement agreement pertaining to matters under the *Code* is an area squarely within the expertise of the Board, which already has the jurisdiction to address alleged breaches of its own Orders. Allowing parties to complain before the Board that a settlement agreement on a matter proceeding under the Board has been violated encourages the private settlement of disputes, preserves the limited resources of the Board by avoiding the need for the issuance of consent orders in each case, and preserves the limited resources of the province's judiciary.

There is precedent in other jurisdictions in Canada that allow labour boards to hear such complaints. Section 96 of Ontario's *Labour Relations Act, 1995*, provides the following:

> **96** (1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act.
>
> ...
>
> (7) Where a proceeding under this Act has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1).

The *Code* should be amended to introduce a similar provision. Granting the Board similar jurisdiction would further the *Code*'s purpose under section 2(e) of promoting conditions favourable to the orderly, constructive and expeditious settlement of disputes.

Recommendation 7: Amend the Code to ban the use of any employee or contractor from performing bargaining unit work during a strike or lockout.

As Unifor documented in *Fairness on the Line: The Case for Anti-Scab Legislation in Canada*,[6] empirical evidence on the frequency and duration of labour disputes strongly supports the case for fulsome anti-scab legislation, since the use of replacement workers leads to longer work stoppages and a higher incidence of violence on the picket line. British Columbia and Quebec are the only two jurisdictions with effective limitations on the use of replacement workers, although more robust federal anti-scab legislation (Bill C-58) is currently making its way through Parliament.

However, as we note in *Fairness on the Line*, the *Code*'s provisions under section 68 limiting the use of replacement workers in BC contains a number of critical loopholes, which permit the use of managers, non-bargaining unit employees and contractors as replacement workers, as long as they were hired or engaged prior to the notice to commence bargaining. Unlike Quebec, section 68 also permits bargaining unit members to cross the picket line.

Unifor's own history with strikes and lockouts reveals that some of the longest and most fractious labour stoppages our members have experienced occurred in cases where managers were deployed as replacement workers.[7] And we know that the potential for acrimony and violence only increases in situations where bargaining unit members are able to cross the picket line.

Section 68 (1) should therefore be amended to stipulate that an employer cannot use the services of any person, paid or not, to perform bargaining unit work during a strike or lockout, irrespective of when they were hired or engaged. Additionally, the *Code* should be amended to prohibit employees from crossing a picket line.

Unifor recognizes that these provisions will not apply to operations that the Board designates as essential services, however, we encourage the Board to weigh all the facts carefully when rendering decisions on what activities constitute essential services. The Board must ensure that the right to strike and apply economic pressure on an employer through a labour stoppage is not arbitrarily delimited or undermined through an overly broad designation of essential services, and applications must be judged in a timely manner on their merits. Unifor members in BC have had firsthand experience with labour stoppages where replacement workers were brought in under the cover of essential services, leading to unnecessarily protracted disputes.

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[6] Unifor. "*Fairness on the Line: The Case for Anti-Scab Legislation in Canada*", 2021. Online: https://www.unifor.org/resources/our-resources/fairness-line-case-anti-scab-legislation-canada-0

[7] Ibid, 12-13.

Recommendation 8: Expand protections against contract flipping.

In 2019, the *Code* was amended with the passage of Bill 30 to protect the bargaining rights of workers against contract flipping.[8] This was an important step forward for protecting workers that would otherwise face the loss of their collective bargaining rights, jobs or negotiated wages and benefits when a contract was retendered between contractors. The purpose of that amendment was to protect workers against a potential race to the bottom by preventing both contractors and companies that award contracts for services from undermining pay and other conditions of work for workers through contract flipping.

Section 35(2.2) of the *Code* now applies to certain types of contracts for services, including building cleaning services, security services, bus transportation services, food services, and non-clinical services provided in the health sector. That section also allows for further services to be prescribed by regulation under section 159(2)(f) of the *Code*. Unifor submits that the categories of contracts for services should be expanded to cover any group of workers in the province that may face the loss of union representation as a result of contract flipping.

Expanding successorship protections for contracts for services for every sector is an important measure for workers across the province. No employer should be able to flip a contract to undermine the democratic rights and important gains made by workers through collective bargaining. Workers in every sector should be equally protected.

Additionally, where a contract has been retendered, the onus should be on the employers involved to show that the successorship provisions do not apply, since they have relevant information about the successorship. Unifor also submits that the *Code* must be amended to address circumstances where a contract is awarded to a successor contractor during on ongoing labour dispute with the predecessor contractor, ensuring that any bargaining rights of unions and employees is retained.

Finally, Unifor submits that the *Code*'s protections under section 35(2.2) must be expanded to ensure that a contract retendering between contractors does not diminish or undermine negotiated wages and benefits of employees when the workforce of a successor contractor is already unionized. Since the coming into force of the new provisions under Bill 30, the Board has adjudicated numerous disputes between unions addressing which bargaining agent would represent workers affected by contract retenderings, and which collective agreement would apply to those workers. A core purpose of section 35(2.2) is to protect against a race to the bottom concerning benefits, wages and working conditions. The *Code* should be further amended to require the Board to consider the existing wages, benefits and working conditions of employees of a predecessor contractor when determining what rights, privileges and duties may have been acquired or retained as a result of a contract retendering successorship. If the Board is asked to determine which

[8] *Labour Relations Code Amendment Act, 2019*, SBC 2019, c 28 ("Bill 30").

bargaining agent will represent a group of workers as a result of a contract retendering, a legislative amendment should be in place to ensure that the wages, benefits and working conditions of affected employees are not altered if the collective agreement already in place with the successorship contractor is not equal or superior to the collective agreement that is to continue as a result of the retendering.

Recommendation 9: Extend the post-certification freeze provisions until such time as a first collective agreement is reached.

While Bill 30 had extended the post-certification period during which employers may not alter terms or conditions of employment from 4 months to 12, this change did not go far enough to protect workers and ensure against the erosion of support for unions before a first collective agreement has been concluded.

Unifor recommends that the freeze period in section 45 of the *Code* be extended to the point at which a first collective agreement is concluded. This change would significantly minimize the opportunity for employer mischief and would promote a key purpose of the *Code*: the orderly, constructive and expeditious settlement of disputes. While Unifor welcomed the change brought by Bill 30, a time-specific freeze still incentivizes employers to run out the clock on the freeze period, and, accordingly, drag their heels during negotiations.

Unifor acknowledges that this Panel has been asked to assess proposed changes to the *Code* with a view to relevant developments in other Canadian jurisdictions. A post-certification freeze that extends until the conclusion of a first collective agreement exists in Quebec pursuant to section 59 of the *Labour Code*, CQLR, c C-27. A similar provision should be implemented in BC.

Recommendation 10: Amend the adjustment plan language in section 54 to provide a clear enforcement mechanism for breach of that section.

While Unifor welcomed the *Code* amendments brought by Bill 30 addressing adjustment plans under the *Code*, which now permits parties to apply to the Board for appointment of a mediator to assist in the development of an adjustment plan, there still remains no clear enforcement mechanism under the *Code* to adjudicate or otherwise resolve disputes arising out of section 54. While section 54 requires parties to meet in good faith and "endeavour" to develop an adjustment plan, parties are not required to actually reach a plan. This often leaves employees with no effective remedy when an employer is simply going through the motions of negotiating a plan.

The *Code* should be amended to permit parties, if assistance from a mediator appointed by the Board has failed, to apply to the Board to determine the terms of an adjustment plan, or alternatively, to arbitrate the terms of an adjustment plan on an expedited basis, and any such adjustment plan should be enforceable as if it were part of the collective agreement between parties.

Recommendation 11: Allow secondary site picketing

Secondary picketing is a constitutionally protected right under the *Charter*. The picketing restrictions currently in place under the *Code* unnecessarily limits workers' freedom of expression and ability to inform and persuade the public of labour disputes. The current restrictions also allow employers to mitigate the economic impacts of a strike or lockout by redistributing their goods and services to other substantially similar worksites, resulting in prolonged labour disputes. A majority of other jurisdictions in Canada do not restrict picketing in the manner set out by the *Code*.

Unifor recommends deleting subsection 65(8) of the *Code*, and amending the *Code* under subsection 65(4) to permit secondary site picketing at or near sites or places that supply goods or furnish services that substantially similar to the work performed by bargaining unit employees and would provide a reasonable substitute for the public.

/klcope343

March 22, 2024 **BY EMAIL:** lrcreview@gov.bc.ca

Labour Relations Code Review Panel
c/o Michael Fleming, Chair
4055 Pender Street, Suite 15
Burnaby, BC V5C 2L9

Dear Sirs / Mesdames:

Re: Labour Relations Code Review - 2024

UA Local 170 hereby requests that the Labour Relations Code Review Panel make the following recommendations to advance improvements to the Labour Relations Code ("the Code"):

1. A recommendation that the Minister of Labour direct the appointment of a panel to conduct an *de novo* inquiry, under section 41 of the Code, into labour relations in the building trades sector of British Columbia's construction industry;

2. A recommendation that the raiding provisions of the Code be amended in accordance with submissions made to this panel by the International Union of Operating Engineers, Local 115; and

3. Recommendations that the Code be amended in accordance with the with submissions made to this panel by the BC Building Trades.

Eleven years since last Section 41 Inquiry

The last section 41 inquiry was was initiated by Ministerial direction of May 3, 2006, resulting in the appointment of a panel, constituted of Associate Chair, Michael Fleming ("the Former Inquiry") and the ultimate publication of an report dated December 19, 2012 ("the 2012 Fleming Report").

Since the 2012 Fleming Report, there have been significant changes in British Columbia's construction industry, characterized by a massive demand for labour from large-scale industrial development projects, such as the Site C dam and the LNG Canada project in Kitimat. The enactment of the *Skilled Trades BC Act* has reinvigorated mandatory trades certification amidst a shortage of skilled labour. Consequentially, we are witnessing the successful expansion of craft-specific training and apprenticeship programs - and the ongoing relevance of craft unions and the craft model of representation. Much of this was predicted in the 2012 Fleming Report at paragraphs 40 - 42:

> 40 It is commonly accepted that the existence of successful and expanding apprenticeship and training programs is integral to the successful functioning and growth of the industry.
>
> 41 The importance of the growth in training and apprenticeship programs is highlighted by the projected significant shortages in a number of skilled trades over the next five to seven years: see, for example, Construction Industry Sector Council.
>
> 42 As in many other sectors, there is an aging workforce in the building trades sector that will create its own natural skills shortages. As well, the demand for skilled trades will be exacerbated as a result of the existing and anticipated capital projects coming on line in the near future in B.C. For example, there are major investment plans in the forest sector, the oil and gas (particularly LNG projects and pipelines) sector, the Kitimat Modernization Project,

To respond to industry changes and the increasing pressures on craft unions, the 2012 Fleming Report emphasized, at paragraphs 47 and 48, the importance of exploring different labour relations approaches and critically examining existing traditional labour relations models.

With the passage of eleven years since the Former Inquiry, we submit that it is incumbent on government to re-initiate the exploration of different construction labour relations approaches in response to recent industry developments, as discussed below, that undermine the stability of the building trades sector and cast light on the functionality of anachronistic section 41 structures.

Resurfacing Instability from the Carpenters' Union

The Carpenters' long history of conflict over representational issues within their own craft is set out in *Construction, Maintenance and Allied Workers Bargaining Council v. Construction Labour Relations Assn. of British Columbia* [2016] B.C.J. No. 805. This pattern of industrial unrest has already taken a tremendous toll on British Columbia's construction industry.

At the root of the Minister's 2006 initiation of the Former Inquiry was the need to address a shifting representational landscape pertaining to the craft of carpentry and the competing interests amongst CMAW, BCPC, UBCJA and BCRCC as described at paragraphs 1, 4, 7 and 62 - 68 of the the 2012 Fleming Report.

History is repeating itself as, once again, the circumstances that demand a section 41 inquiry include a new iteration of havoc from the Carpenters' union that threatens to undermine the jurisdictional truce that has been a contemporary measure of functional cohesion amongst the building trades.

While the 2012 Fleming Report, at paragraph 75, identified the maturity of the building trades sector regarding jurisdictional disputes, recent rogue conduct of the Carpenters has been regressive in that regard. Over the last year, two UBCJA locals have engaged in conduct that is inimical to the craft model of representation and the Carpenters' membership in BCBCBTU.

Present day construction labour relations is premised on a territorial equilibrium that was engendered through decades of Board certification of "standard craft bargaining unit" descriptions; and has been self-governed through the BC Building Trades administration of the Jurisdictional Assignment Plan. Most import, for current purposes, is that each of these standard unit descriptions corresponds to the craft union "pertaining to the craft" [section 21(1)].

The Carpenters have always been one such union. As a result of changes at their international level, the Carpenters are now abdicating from that role in an attempt to hack the Code and exploit the Codes representational regime to laterally encroach along craft lines. This defection constitutes a tectonic shift in the landscape upon which has rested an industrial stability that is not to be taken for granted.

The first iteration of the Carpenters' breach is described in *Altrad Services Ltd.*, 2023 BCLRB 142 (Leave for Reconsideration of 2023 BCLRB 118) where the UBCJA 1370, represented by Peter A. Gall, K.C., unsuccessfully attempted to certify an "all-remaining employees" unit where the employer was already subject to a craft certification.

Thereafter, it came to light that UBCJA Local 1907 had entered into an "all employee" voluntary recognition agreement with respect to a bargaining unit of painters and glaziers employed by a glazing specialty contractor, Tailored Glass Ltd. ("the VRA") An application for declaratory relief against the VRA has been brought by IUPAT Local 1527; and the BC Building Trades has brought a standing application in support of Local 1527 - all of which remains pending with the Board.

The VRA awkwardly positions the UBCJA Local 1907, a carpentry craft union, as the representative of a bargaining unit that is, in reality, constituted entirely of employees performing the craft work of glazing. The employer is incontrovertibly a glazing specialty contractor.

The VRA resulted in the UBCJA Local 1907 asserting representational rights that are inimical to the Board's long-standing recognition of Local 1527 as the appropriate representative of the craft of glazing in British Columbia.

To the shock of its fellow constituents on the Bargaining Council, the Carpenters Local 1907 have sought to expand into the established craft work jurisdiction of the Glaziers Local 1527 and disrupt the jurisdictional equilibrium and industrial stability which has developed through an evolution in craft governance in British Columbia, including the current section 41.1 structure.

The BC Building Trades, by internal motion of September 8, 2023, brought forward an ultimatum forcing the UBCJA to either cease its predatory conduct or withdraw from the BC Building Trades. Having refused to cease and desist, the Carpenters have acceded to their expulsion from the BC Building Trades and have revealed themselves to be a predatory craft union that has openly declared that it will not respect the standard, established jurisdictional boundaries of the building trades.

This conduct by a member of the Bargaining Council constituted a complete rupture in the fabric of cohesive and unitary functionality that underlies the section 41.1 structure. The building trades are now effectively mandated into bargaining as an involuntary association, a constituent of which is eating "the union" from within.

The Carpenters conduct reveals defects in the section 41.1 structure. At the same time as being mandated into the Bargaining Council, the building trades stand vulnerable to jurisdictional encroachments by their fellow affiliates, under the pretense of an all-employee certification regime sanctioned under the Code.

As long as the Code can be exploited for a craft union to encroach on the work jurisdiction of another craft, then there is no sense having a mandatory, legislated BCBCBTU which was supposed to be premised on the craft model. The legislature has to fish or cut bait: either lock in a model of craft representation (with integrity) on the basis of exclusive representation of craft employees by unions pertaining to their respective crafts; or enact a new model of construction labour relations. The province cannot both mandate its building trades to a compulsory association whilst allowing a constituent of that group to encroach craft lines under the banner of the all-employee model. As stake ithe ability of British Columbia's ICI sector to thrive and meet the building demands of the coming decade.

The *Cicuto & Sons Contractors Ltd.* [1988] B.C.L.R.B.D. No. 271 endorsement of all-employee units was always bad for the building trades as exemplified by the proliferation of CLAC to the detriment of working conditions. But the exploitation of that model by a BCBCBTU member against its fellow affiliates constitutes a new and dangerous development that stands to undermine the policy basis upon which the section 41.1 structure is premised.

Cohesive and Unitary Functionality

The underlying legislative intention behind the formation of the Bargaining Council is set out at paragraph 17 of the 2012 Fleming Report:

> The Bargaining Council was intended to function in a reasonably cohesive, unitary manner as a means of achieving a more rational bargaining structure in the sector.

The Bargaining Council's "competitive advantage arises to the extent to which cohesiveness can be assured". [2012 Fleming Report, para. 86]

As exemplified by the rogue and divisive conduct of the Carpenters, we submit that the objective of cohesive and unitary functionality is not being fulfilled under the current structure. The seeds of division within the current bargaining structure were the basis of opinions expressed at paragraphs 84 - 85 of the 2012 Fleming Report:

> 84 In my view, both CLR and the Bargaining Council have contributed to the existing balkanization and challenges facing the existing collective bargaining process. However, I believe there is general agreement that, in order to ensure the sector is competitive, viable, stable and responsive to market realities, challenges arising from the existing

> bargaining structure and process should be critically reviewed and changed where necessary or appropriate. In that regard, it is important to ensure that collective bargaining structures and processes be made as cohesive and co-ordinated as possible on both sides.
>
> 85 In my view, the Bargaining Council essentially operates much more like a coalition than a true bargaining council envisioned under Section 41 of the Code. The associated lack of cohesiveness and related fragmentation is an impediment to the development of a vibrant and efficient labour relations framework.

The recent Carpenters' disruption to Bargaining Council cohesion adds increased weight to the ongoing policy mandate to critically review the existing bargaining structure to ensure that the building trades sector is competitive, viable, stable and responsive to market realities.

Problems with Existing Structure: Procedural Inequality

Bargaining power should be a function of economic power as tested by market forces, the particulars of which are beyond the scope of this submission.

Bargaining power should *not* be a function of disparate opportunities relating to the procedures of collective bargaining. Such inequities exist under the current section 41.1 structure. While the building trades are compelled to bargain on an industry-wide basis, construction industry employers are free to forum shop and migrate from one bargaining table to the other.

By enabling an employer to migrate as between bargaining tables, the current bargaining structure hampers the development of meaningful and enduring bargaining relationships. Where the employer is not bound to a bargaining format, it can just shape shift into a different affiliation. In the case of the Boilermaker contractors, a recent wave of refuge to CLR membership can be scrutinized as means of increasing bargaining power and playing one negotiating paradigm off of the other in a game of labour relations musical chairs.

Suffice it to say that this inequality exists as between building trades unions and their signatory employers. One party to the collective bargaining relationship has a choice or option that the other party does not have. The resulting inequality of bargaining power is problematic in that it is not a function of economic forces, but rather the function of an un-level playing field engendered by legislation which is not defensible on the basis of public policy.

Solutions

We do not suggest that these problems be addressed by re-enacting section 4.1 of the Code whereby accreditation of CLR makes membership mandatory for employers. Building additional legal structures on an inherently flawed regime will only create new problems. Local 170 opposed section 4.1 while it was in effect and our position in that regard was vindicated by the failure of that model: not one certification was obtained by any union under that regime; and it was repealed before any industry-wide agreement could be concluded under it. Section 4.1 did not work then and there is no reason to believe that it would work now. As discussed below,

Local 170 supports the notion of sectoral bargaining, however we do not see the section 4.1 accreditation of CLR as being the step forward.

Nor do we suggest that the problem be addressed by the wholesale removal of section 41.1 of the Code. The anarchical deregulation of construction labour relations may have unpredictable outcomes.

We question whether a fulsome consideration of the necessary legislative reform is within reach of the current review process. Construction labour relations is distinct for reasons canvassed extensively in the jurisprudence and summarized in Local 115's submissions to this panel. The challenges faced by this sector demand a separate process geared towards fulfillment of section 41's policy mandate of cohesive and unitary functionality.

Accordingly, we propose that the structural dysfunction of the present regime be addressed on a comprehensive basis by way of a *de novo* section 41 inquiry that may inform the enactment of construction-specific labour relations legislation to advance contemporary labour strategies in pursuit of the section 2 objectives under the Code and in fulfillment of the meaningful process of collective bargaining as guaranteed under section 2(d) of the Charter.

Sectoral Bargaining

Local 170 calls for a strong, fortified approach that will enhance the craft model. Some form of sectoral bargaining may well be the means of achieving that goal.

Since the creation of the Bargaining Council, collective bargaining has evolved under the Council structure in a complex and unique manner which reflects the competitive pressures of each sector of the industry. Local 170 submits that there are, in reality, three sectors within the unionized construction industry in B.C., namely:

1. Mechanical and Electrical Trades Sector; and
2. Finishing Trades Sector; and
3. Civil Trades Sector.

Local 170 submits that the experience of collective bargaining through the Bargaining Council structure since its creation has given rise to separate communities of interest and separate collective bargaining relationships within the three sectors. As a result of this labour relations reality, Local 170 submits that the path to meaningful reform of the collective bargaining process engaged in under the Bargaining Council Constitution should be by way of specialized legislation to facilitate and encourage effective collective bargaining consistent with the Board's duties listed in s.2 of the *Code*, through the creation of these three consolidated trade sectors.

On repeated occasions, the Board has emphasized the importance of exploring different labour relations approaches as a means of addressing labour relations challenges (see Fleming s.41 Report at para. 47; and see *Construction Labour Relations Association*, BCLRB No. B90/2006; see also *Health Employers Association of B.C.,* BCLRB No. B393/04; *Canadian Affiliates of the Alliance of Motion Picture and Television Producers*, BCLRB No. B47/2010).

Local 170 advocates for a meaningful process of legislative reform of the Bargaining Council structure through new labour relations approaches which reflect the current pattern of collective bargaining relationships in the building trades sector. Because of the complexity of the issues faced by the Bargaining Council and its constituent members in achieving meaningful reform and a real improvement to the collective bargaining process with CLRA contractors, Local 170 submits that it is necessary and appropriate for the Minister to conduct a section 41 inquiry. Such a process has the potential to provide a solid basis of information and a concrete foundation for developing a new sectoral structure for the Bargaining Council that serves the purposes of s.2 of the *Code* and the interests of all unions and contractors doing business in the Building Trades Sector.

A sector bargaining structure would create the best format for unions and their signatory contractors to deal with their sector specific and trade specific work force skill and training issues in furtherance of s.2(d) of the *Code*.

A new sector bargaining structure is also consistent with the current reality of the unionized construction industry, where there has been a fairly significant reduction in the share of work performed by general contractors and a corresponding growth of the specialization and number of subcontractors. (See Fleming s.41 Report at para. 34). Collective bargaining with specialized subcontractors will be grouped by the sector in which they do business and involve only those trades which they employ.

A new sector bargaining structure stands to enhance the ability of unions and employers to negotiate directly with each other in order to deal with issues specific to their area of operation and expertise, without unnecessary interference by other parties in their decision making. It promotes and strengthens the trade level bargaining process while reserving the main table bargaining process for only those industry-wide common issues.

Sectoral bargaining may offer a more rational bargaining structure for the Bargaining Council by aligning unions with common interests and issues with their signatory employers. In furtherance of s.2(f) of the Code, this new structure would minimize the effects of collective bargaining disputes from one sector impacting another. It would avoid internal conflict within the Bargaining Council resulting from unresolved trade issues winding up at the main table. It would entirely avoid one union winding up at the "tail-end" of the bargaining process and delaying the conclusion of the bargaining process. Accordingly, sectoral bargaining stands to provide some relief against the protracted duration of bargaining that has plagued CLR and BCBCBTU at the industry-wide table.

Sectoral bargaining may also incorporate the majoritarian principle underlying the *Code*, within the overall structure of the Bargaining Council.

Under a sectoral bargaining structure, it is likely that newly organized contractors would default to standard provincial agreements that would establish a level playing field for competition amongst contractors. Through the take-up of a majority of specialty contractors in their respective crafts, the prevalence of industry-wide standard agreements has already been

demonstrated. For example, the Boilermakers Contractor Association has its own standard agreement with the Boilermakers Lodge 359; the Sheet Metal Contractors Association has the Standard Sheet Metal & Roofing Working Agreement; the Canadian Automatic Sprinkler Association has its own National Road Sprinkler Fitter Collective Agreement; and Local 170's Pipe Trades contractors have Local 170's Standard ICI Agreement.

Specialized Legislation

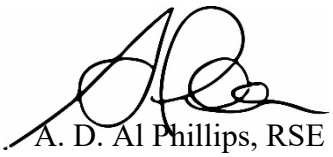
As stated at paragraph 9 of the 2012 Fleming Report, "the overarching concern of the Board in the Section 41 process is the stability of the building trades sector and the impact of the labour relations structures created by the Board under Section 41 of the Code on the competitive position of the sector".

With a view to that concern, a section 41 inquiry would be the best means to address the construction industry as presenting unique labour relations challenges requiring construction specific labour relations legislation that engenders a new bargaining structure and enhances the stability of the craft model. At stake is nothing less than the availability of a robust, highly skilled work force and the fulfillment of rights to a meaningful process of collective bargaining under section 2(d) of the Canadian Charter of Rights and Freedoms.

In-person Meeting

Local 170 requests the opportunity to make its submissions at the scheduled April 5, 2024, Vancouver meeting of the panel.

All of which is respectfully submitted.



A. D. Al Phillips, RSE
Business Manager & Financial Secretary

1518 UFCW

WE FIGHT FOR FAIRNESS
Kim Novak, President & Patrick Johnson, Secretary-Treasurer

March 22, 2024

Labour Relations Code Review Panel
Ministry of Labour

email:lrcreview@gov.bc.ca

RE: Submission to the Labour Relations Code Review Panel

Submission by the United Food and Commercial Workers Local 1518 (UFCW 1518)
Advocating for Standardized Contract Language and Sectoral Certification to Enhance Labour Relations

Dear Panel Members,

UFCW 1518 is British Columbia's largest private-sector union, representing more than 28,000 workers in various fields across the province. As an organizing union, UFCW 1518 is familiar with the changing needs of today's workplaces in British Columbia. Since the last Labour Code Review, we have organized workers in cannabis shops, numerous retail stores, movie theatres, restaurants and cafés, food processing plants and other work sites. These workers face unique vulnerabilities, as they are often young, new immigrants, and in some cases, working their first job.

To better protect these vulnerable workers, UFCW 1518 stands with the labour movement in asking the Labour Relations Board to look at creating broad-based sectoral agreements. These agreements would establish standards in specific industries, complementing the Employment Standards Act to protect workers' interests while providing consistency to employers. As a first step toward creating these needed sectoral agreements, we urge the panel to explore strategies to simplify negotiating a first collective bargaining agreement (CBA).

After the excitement of forming a union, a drawn-out bargaining process often saps workers' enthusiasm and resolve. While negotiating wages and scheduling is often challenging, many items in a collective agreement are less contentious but still onerous to bargain, consuming valuable time at the bargaining table. These drawn-out negotiations are expensive to the employer and frustrating to the workers. Lengthy negotiations can compromise the burgeoning relationship between the employer and the union, causing unnecessary contention down the road. The delays not only impede resolution of the critical issues raised by workers in the first place, but also undermine their resolve and collective voice.

Section 55 has provided improvements to achieving first contracts; our proposed changes would benefit workers, unions, and employers. We suggest that the panel input recommendations for standard baseline language on several items into Section 55. While this boilerplate language may be changed in bargaining, for a first CBA it could standardize grievance procedures, access to employee personnel files, probationary periods, and other items. Bargaining a standard grievance procedure can be extremely time-consuming for a new employer, even though we usually land on a similar procedure in all contracts. We have observed similar trends on other common collective agreement items, such as outlining a Joint Labour Management Committee, establishing management rights clauses, and creating a probationary period. Boilerplate language would make this process more efficient and reduce tensions, leaving more time and energy for the items that are most important to workers and employers.

The issue is best illustrated by one of our former members, Aleena Haq, an organizer at a UBC-based grocery store who participated in the bargaining process:

> "Bargaining with an employer comes with inherent challenges, but basic things like grievance procedures, union shop, and even management rights became a significant issue during the bargaining process at my workplace. It was brutally demoralizing. At one point, we spent 3 hours discussing the grievance procedure because the employer insisted on challenging every sentence. We joined a union to seek fairness and better working conditions, and all we got was delays and disappointment. There has to be a better way."
> – Aleena Haq, former Sum's Grocery Checkout worker.

In addition to this written submission, UFCW 1518 intends to request an opportunity to present oral submissions to the committee. We would be pleased to provide specific examples at various forums where the absence of a built-in structure adversely affects young and vulnerable workers following their decision to form a union. We will be attending the Surrey hearing on May 6 and would appreciate having the opportunity to present on this significant issue at that time.

Respectfully,

Patrick Johnson
Secretary-Treasurer, UFCW 1518

Submissions to the Labour Relations Code Review Panel

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)

MARCH 22, 2024

UNITED STEELWORKERS
USW
DISTRICT 3

Introduction

United Steelworkers (USW) represents 225,000 members in Canada, 30,000 of whom work in British Columbia. We are also the largest private-sector union in North America, with 850,000 members in Canada, the United States, and the Caribbean.

Steelworkers' real strength is our diversity. Our members include people of all socio-cultural backgrounds in virtually every job in every industry. While our roots are in resource sectors such as mining and steel, as well as manufacturing, the USW has emerged as British Columbia's most diverse union. We have a significant presence in the forest and telecommunications industries through mergers with the Industrial Wood and Allied Workers (IWA) and the Telecommunications Workers Union (TWU). A growing portion of our membership now comes from the service sector in workplaces like credit unions, call centers, coffee shops, hotels, and nursing homes. Across Canada, Steelworkers have organized security guards, airport screeners, taxi and truck drivers, and university employees.

The breadth and scope of our union's experience, drawn from widely divergent industries across many jurisdictions, provides us with a solid foundation upon which we can offer recommendations to the Review Panel. We have a deep appreciation of the impact that labour legislation has on the working lives of our members.

Our union has been representing British Columbian workers since 1937 (in the case of our predecessor unions, even earlier—the late 1800s). We negotiated the province's first collective agreement. Our longevity makes us keenly aware of the marked manner in which the economy has changed over the decades and the many ways in which the current labour law regime fails our most vulnerable workers.

It is with this background in mind that we respectfully offer the following submissions for the Review Panel's consideration.

Summary of recommendations

USW makes the following recommendations:

1. Enable access to employee lists when a threshold level of support is established;
2. Establish a single-issue commission to create broad-based or sectoral bargaining where needed;
3. Extend the post-certification freeze provisions until such time as a first collective agreement is reached;
4. Amend section 54 of the Code to provide an enforcement mechanism for adjustment plans;
5. Expand the scope of the successorship provisions to include "contract-flipping" in all industries; and
6. Close the loophole which requires federally regulated workers to cross provincial picket lines.

Please note that, in addition to the recommendations set out above, as an affiliate we endorse the submissions made to this Review Panel by the BC Federation of Labour. While USW's submissions focus on our union's key priorities, the recommendations set out in the Federation's submissions also have our full support.

We also wish to recognize that while the process of reviewing the Labour Relations Code through the lens of reconciliation is beyond the scope of the present process, USW is firmly committed to engaging in that critical work. As the BC Federation of Labour writes in its submissions:

> *The BC Federation of Labour is committed to Reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration. Labour strongly believes that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.*

The union movement is, at its core, about human dignity. As a trade union, USW acknowledges its role in addressing the legacy of colonialism. We look forward to participating in a process to "bring provincial laws into alignment with the UN Declaration and to develop and implement an action plan to achieve the objectives of the UN Declaration in consultation and co-operation with Indigenous Peoples."

Protecting the right to organize

Introduction

The Review Panel has been asked to "[e]nsure our labour law is keeping up with modern workplaces through the upcoming review of the Labour (Relations) Code, providing stable labour relations and supporting the exercise of collective bargaining rights."[1]

Collective bargaining rights cannot be achieved without a Labour Relations Code that allows workers to organize in a manner which supports trade unions as the "freely chosen representatives of employees"[2]. That, in turn, requires robust protections against undue influence in that free choice. It is critical, therefore, that the Code not only expressly prohibits such interference but provides a mechanism for unionization which, by virtue of its structure, minimizes the potential for illegal interference in the certification process.

[1] **Mandate letter to the Minister of Labour. Government of British Columbia, December 7, 2022.** https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/lbr_-_bains.pdf

[2] **Section 2(c) of the British Columbia *Labour Relations Code*, R.S.B.C. 1996, c. 244.**

Single-step certification

The re-introduction of single-step certification in 2019 was a substantial step toward a certification process that supports the Code's objective of protecting employee choice.

Since Bill 30 became law, USW has successfully certified numerous workplaces in British Columbia, many of which were certified via single-step certification. We have observed significant differences between campaigns in which certification was achieved on the basis of card check and those in which certification required a vote. For instance, single-step certification has:

- Minimized or in some cases eliminated the opportunity for employer interference, as employees were able to exercise their choice before their employer was aware of the campaign;
- Reduced the incidence of unfair labour practice complaints;
- Resulted in faster certification as the process is not held up by the adjudication of such complaints;
- Minimized the workplace disruption and uncertainty that can flow from a certification application which remains unadjudicated for long periods of time; and
- Been particularly effective in organizing workplaces where workers are young, from marginalized communities, or whose work is precarious.

The unionization of a number of Starbucks locations in British Columbia is an example of how card-based certification furthers the objective of protecting employees' free choice.

Like many workplaces in the service sector, Starbucks workers are disproportionately female, gender-diverse, and racialized. Baristas were among those who continued to work in customer-facing positions throughout the pandemic, often without adequate PPE, putting them at risk. In addition to the hazard of contracting COVID, these workers bore the brunt of customers' anxieties and suffered significant workplace harassment,

which management did little to curb. This experience drove many service sector workers to seek out union protection. However, standing up to your large multi-national corporate employer when you are a young worker with little or no economic power requires incredible fortitude.

Card-based certification has gone a long way to remedying this power imbalance and enabling workers to exercise their right to organize in a manner which is free of employer interference. Nonetheless, there is more work to be done.

> *"We at Valley Centre decided to join the union because we believe in supporting each other as a team. Starbucks preaches a team environment, but like every corporation, it is each worker on their own against management."*[3]
>
> **– Sarah Anderson**,
> barista at the Valley Centre Starbucks

Access to lists

One of the challenges that organizers continue to face is identifying employees. Unions cannot engage in conversations with workers about unionization if they do not know who they are or where they work.

This is a relatively new problem. Gone are the days when organizers could simply stand outside the gates of a large industrial plant and hand out leaflets at shift change. While such workplaces still exist, they are now the exception to the rule. Today's workers are

[3] **"Langley Valley Centre Starbucks workers join Steelworkers, becoming third unionized store in B.C."** ***United Steelworkers*****, July 7, 2022,** https://usw.ca/langley-valley-centre-starbucks-workers-join-steelworkers-becoming-third-unionized-store-in-b-c/

often isolated, working at home or dispersed across multiple locations, with little or no direct contact with their "coworkers," and in fact may not even know their fellow employees. Turnover is often high.

The result is that the very employees who are most in need of a collective voice often have the least access to collective bargaining because a conversation about unionizing cannot take place in a vacuum of information.

Where workers do manage to file an application for certification despite these impediments, the employee lists furnished by employers are frequently padded so as to defeat the application. When unfamiliar names appear on employee lists, the same dynamics that make organizing a challenge in the first place make it almost impossible for workers to verify the legitimacy of those names.

Therefore, to facilitate access to collective bargaining, USW recommends that the Code be amended so that where a union is able to demonstrate threshold support of 20 percent of employees in the proposed unit, the employee list and contact information should be disclosed to the union within a reasonable period of time.

Sectoral bargaining

The Wagner Model of labour relations does not meet the needs of today's economy. Industry and workplaces have evolved dramatically since the 1930s, but the manner in which workers unionize remains essentially unchanged. With the rise of precarious and "gig" based work, the enterprise model of organizing no longer makes sense for a growing number of workers.

For many, the enterprise model presents significant barriers to both unionization and collective bargaining. Employees who work alone, who are sole employees, who work at home or (in the case of care workers) in someone else's home, all face structural barriers to organizing by virtue of the size and location of their workplaces, as well as the uniquely close relationships between employers and employees in such workplaces.

> *"We're fighting against a multinational giant. And we're having to unionize workplace by workplace by workplace, store by store by store, because we're kept separate from each other. It's all different managers, different decisions, different priorities, that sort of thing. And there's no real connection between us. So it's a slow process trying to get every store involved, but it's something that I think that they all need and deserve at this point."*
>
> **– Alexandra Sorrentino**,
> Starbucks worker and organizer, member of USW Local 2009

In other sectors, in particular the service and hospitality sectors, there are other structural barriers. In the fast-food industry, for instance, many of the policies which govern the terms and conditions of employment are established by the franchisor, whereas it is the franchisee who is the direct employer. Even where the employer is directly owned by a common corporate entity, workers face a frustrating disconnect between their actual workplaces and the corporation that governs their working conditions. Compounding the problem, many such employees work at multiple restaurants or stores owned or franchised by the same corporation, cobbling together hours from various locations to make ends meet.

Many of these employees are temporary foreign workers, come from marginalized communities, work second jobs, or are students struggling to balance work and coursework. Turnover is high, and employees know they are easily replaced. Thus, when workers in such industries do succeed in unionizing, they face a dramatic power imbalance that undermines their ability to negotiate a fair collective agreement.

> *"It is a challenging environment to unionize for many reasons, including high turnover. But the fears and frustrations of the [Starbucks] workers . . . are certainly shared by others in the broader hospitality sector."*[4]
>
> **– Jim Stanford**, director of the
> Centre for Future Work and former economist for Unifor

Broad-based or sectoral bargaining is hardly a new idea. Sectoral bargaining has long been a feature of European industry and is the norm in most European nations. The idea has also started to gain traction outside of Europe as other developed nations seek to modernize labour relations to keep pace with economic change. New Zealand, for instance, introduced "Fair Pay Agreements" – a version of sectoral bargaining – in 2022. Earlier that same year, California passed the "FAST Recovery Act," which established sectoral bargaining in the state's fast-food industry.

Versions of sectoral bargaining may also be found closer to home. Quebec's "decree system" is one such model. In BC, sectoral bargaining already exists, in some form, in sub-sectors such as health, education, and community social services.

In 1992, this Review Panel's predecessors, John Baigent and Vince Ready, recommended a form of sectoral bargaining. While this recommendation was not ultimately acted upon, Baigent and Ready considered their sectoral bargaining proposal to be "among

[4] **"Some Starbucks Locations Consider Unionizing Following Complaints of Overwork, Lack of Protection"** ***United Steelworkers*****., October 9, 2020**
https://usw.ca/some-starbucks-locations-consider-unionizing-following-complaints-of-overwork-lack-of-protection/

the most important and significant we are making".[5] The authors were strongly of the view that sectoral bargaining was key to modernizing labour relations:

> ". . . the recommendations to enact a form of sectoral bargaining recognizes – as do many labour law theorists – that if collective bargaining is to go forward, it must find ways to make itself more available to those presently beyond its reach."[6]

Many models of sectoral bargaining have been proposed. A specific recommendation is beyond the scope of these submissions. Moreover, different models may be best suited to the needs of different industries and sectors. There may be no one-size-fits-all solution.

Having said that, whatever model or models of sectoral bargaining are adopted, our view is that sectoral bargaining should be based broadly on the framework set out in the Baigent-Ready Report and modernized, where appropriate, to reflect further changes in the economy since that report was published. Thus, sectoral bargaining should include the following elements:

1. Sectoral bargaining should apply to sectors that are historically underrepresented by trade unions, i.e. where union density is significantly lower than other industries;
2. A "sector" would include both a geographic component and would include work of a similar nature;
3. Defining an appropriate sector for sectoral bargaining would be for the Board to determine;
4. A union demonstrating threshold support in one or more employers within the sector may apply for a sectoral certification;

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[5] John Baigent, Vince Ready and Tom Roper, *A Report to the Honourable Moe Sihota, Minister of Labour British Columbia, Recommendations for Labour Law Reform* (Victoria: Ministry of Labour and Consumer Services, 1992), 30.
[6] Ibid., 33.

5. Bargaining would be with a council representing the employers within the sectoral certification;
6. Any new operations opened by the constituent employers that fall within the scope of the sectoral certification would be automatically governed by the collective agreement (altered, as may be necessary, on application to the Board); and
7. No one union would have a monopoly on representational rights within a given sector.

One element of the Baigent-Ready framework that we do not endorse is the proposal that the model only apply in sectors where the average number of employees is less than 50. While we agree that small workplaces pose a barrier to unionization, the need to address historic underrepresentation is by no means limited to sectors dominated by smaller employers. Further, a numeric threshold ignores the modern reality that "individual" employers – that may technically employ fewer than 50 workers – are de facto employees of much larger corporate organizations. For instance, a particular restaurant franchisee may employ 40 people at any given location, but within a sector, hundreds of employees may be effectively employed by the franchisor. Of course, such workers are among those that would benefit the most from sectoral bargaining.

The Baigent-Ready Report is now over 30 years old. It is high time, we suggest, that we "go forward" and explore other models of organizing that are better suited to the modern economy and to serving the needs of precarious workers and others who face structural impediments to organizing and fair collective bargaining.

Accordingly, we recommend that a single-issue commission be immediately established to consult on implementing broad-based or sectoral bargaining to address changing workplace structures, worker precarity, and other barriers to unionization.

Post-certification freeze period

Bill 30 extended the post-certification period during which employers may not alter terms or conditions of employment from four months to 12. This was a change for the better. However, it did not go far enough.

Our experience has been that the extension of the "freeze period" from four to 12 months simply moved the finish line. We have found that many employers at newly unionized workplaces appear to drag out the process of collective bargaining so that they can run out the clock, so to speak. This has had the unintended effect of frustrating the collective bargaining process rather than facilitating it. The effect of these tactics also comes at the most vulnerable point in the relationship between an employer, a union, and its members – a time during which delays are not just aggravating but serve to undermine the bargaining agent and frustrate the objectives of the Code.

The solution, we suggest, is to extend the freeze period in s. 45 to the point at which a first collective agreement is concluded. This would minimize the opportunity for mischief and would promote the "orderly, constructive and expeditious"[7] settlement of bargaining disputes.

We are mindful that this Panel was asked to assess the issues "with a view to relevant developments in other Canadian jurisdictions". To that end, we note that a post-certification "freeze" that extends until the conclusion of a first collective agreement is not without precedent in Canada. In Quebec, for instance, s. 59 of the *Labour Code*, CQLR, c. C-27 reads, in part, as follows:

[7] **Section 2(e) of the British Columbia *Labour Relations Code*, R.S.B.C. 1996, c. 244.**

Conditions of employment safeguarded

From the filing of a petition for certification and until the right to lock out or to strike is exercised or an arbitration award is handed down, no employer may change the conditions of employment of his employees without the written consent of each petitioning association and, where such is the case, certified association.

We respectfully recommend that our Code be amended to provide a comparable safeguard for newly unionized workers.

Protecting bargaining rights

Introduction

While access to unionization is critical, it means little if the Code does not fully support the right of unionized workers to bargain collectively. Hard-fought gains may be quickly lost through undue delay, "contract-flipping," and statutory loopholes. The following recommendations are intended to address some of the most problematic ways in which collective bargaining rights are undermined.

Adjustment plans

Bill 30 brought a welcome addition to the adjustment plan provisions of the Code, allowing the parties to apply to the Board for the appointment of a mediator to assist in developing an adjustment plan. This was a significant improvement.

However, while s. 54 requires the parties to "meet, in good faith, and endeavour to develop an adjustment plan", there is no requirement that the parties reach an agreement *per se*. There remains noticeably absent any mechanism to adjudicate or otherwise resolve disputes arising out of s. 54. As a result, notwithstanding the

involvement of a mediator, it is our experience that in some cases, employers simply "go through the motions," leaving impacted employees with no effective remedy.

Accordingly, USW recommends that s. 54 of the Code be amended to add the following provision:

> ***54*** *(2.4) If, after mediation, the parties have not agreed to an adjustment plan, the mediator may*
>
> *(a) make recommendations for the terms of an adjustment plan for consideration by the parties, or*
> *(b) arbitrate the terms of an adjustment plan.*
>
> *(2.5) If, after mediation, the parties have agreed to an adjustment plan, or the terms of the adjustment plan have been arbitrated under (2.4), the adjustment plan is enforceable as if it were part of the collective agreement between the employer and the trade union.*

Individual employees are not the only beneficiaries of a meaningful adjustment plan. As a union representing workers in forestry, mining, and other resource sectors, we know that the economic viability of an enterprise impacts everyone. In resource-based communities, the town's very survival may be at stake. And given that much of the province's wealth is generated in these rural communities, there is a broader public interest engaged when a company faces economic challenges. In such cases, it may be appropriate to convene broader consultations with stakeholders to ensure that s. 54 can effectively serve the Code's objective of "fostering the employment of workers in economically viable businesses".

Currently, there is no statutory mechanism to facilitate such consultations. Therefore, USW recommends that s. 54 of the Code also be amended to add the following:

54.1

(a) If during the term of a collective agreement, there is or is a likelihood of an employer introducing a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies, the minister may, in the interest of fostering the employment of workers in economically viable businesses, on application or on the minister's own motion, appoint an economic advisor.

(b) On appointment, the economic advisor must investigate the causes and potential impact of the changes set out in (a) and may make recommendations consistent with fostering the employment of workers in economically viable businesses.

(c) The economic advisor 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.

(d) On receipt of a report of an economic advisor appointed under this section, the minister must furnish a copy to each of the parties affected and must publish it in the manner considered advisable.

(e) 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 economic advisor, the parties are bound by the report in respect of those matters.

Successorship

The Code amendments in 2019 went some way to addressing the problem of "contract-flipping" by extending the protection of the successorship provisions to contract-retendering in certain sectors (building cleaning services, security services, bus transportation, food services, and non-clinical health care sector services).

While those sectors are certainly among those in which contract-flipping is particularly common, the problem is by no means limited to those sectors. Workers in all sectors are equally deserving of the stability and continuity that flows from section 35(0.1) of the Code. Those employees whose tenure is dictated by the duration of their employer's contract for services are, by definition, precarious. There is simply no principled basis upon which other workers ought to be excluded from this section of the Code.

Thus, we recommend that the protections afforded by s. 35 of the Code be extended to all workplaces in all sectors of the economy.

Federal picket lines

It goes without saying that picketing – and the right to respect a picket line – are fundamental components of our labour relations regime. Picketing is labour's primary means of persuasion and constitutes expression which is protected under the Charter[8]. As this Panel will know, however, a recent decision of the BC Labour Relations Board has had the effect of eroding the right to respect picket lines where workplaces are governed by both provincial and federal labour relations codes.

In *Vancouver Shipyards Co. and Construction, Maintenance and Allied Workers Bargaining Council*, 2022 BCLRB 146 (granting reconsideration of 2022 BCLRB 108) ("*VSY*"), the Board held that the phrase "permitted under this Code" contained in the

[8] ***R.W.D.S.U., Local 558*** **v.** ***Pepsi-Cola Canada Beverages*****, [2002] 1 S.C.R. 156;** ***R.W.D.S.U. v. Dolphin Delivery Ltd. Local 580*****, [1986] 2 S.C.R. 573**

exception to the definition of "strike" means "picketing which the Code expressly allows". The result of this decision is that if a provincially regulated employee seeks to respect a picket line that is lawful under the federal Code, the protection of this exception does not apply, which would turn that provincially regulated employee's act of respecting a picket line into an illegal strike – effectively forcing the employee to cross the picket line.

For our members, this case was not just an academic exercise in statutory interpretation. It had the effect of dividing households.

In November of 2022, approximately 300 members of USW Local 1944 locked out by Rogers picketed at the three Lower Mainland Rogers locations where our members work. One of those members was Ron Anhofer. His wife, Colleen Lopez-Anhofer, is a provincially regulated contract technician and a member of IBEW Local 213. When Lopez-Anhofer was dispatched to work at a Rogers location behind picket lines, she was forced to cross – despite her union having negotiated into their collective agreement the right to respect lawful picket lines. As IBEW assistant business manager Robin Nedila observed, this "put union members in an impossible quandary, pitting them against their colleagues and — in this case — their spouses."[9]

> *"It's the worst feeling in the world," said [IBEW member] Lopez-Anhofer. Suddenly, she was spending the morning supporting her husband and his co-workers as they walked the picket line — then, in the afternoon, she was being forced to do their jobs.*[10]

[9] **Zak Vescera, "Her husband was locked out. she was forced to cross his picket line," *The Tyee,* December 14, 2023** https://thetyee.ca/News/2023/12/14/Locked-Out-Wife-Forced-Cross-Picket-Line/

[10] **Ibid.**

There is no principled reason why the exception to the definition of strike should not be extended to include the act of respecting federally regulated picket lines. Indeed, the labour community has long operated under the understanding that this protection extended to federal picket lines – which is why *VSY* took many in the labour community by surprise. Rather, the Board's decision flowed from the specific language of the Code and the need to interpret the Code in a way that does not require the BC LRB to adjudicate matters outside its jurisdiction. That is an issue which we submit may be readily fixed.

We note that Government has now introduced a legislative amendment to address the above concern: section 57, *Bill 9 – 2024, Miscellaneous Statutes Amendment Act, 2024*[11]. As of the date of these submissions, the Bill is still in first reading. Assuming

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[11] **Section 57 reads as follows:**

57 Section I of the Labour Relations Code, R.S.B.C. 1996, c. 244, is amended

(a) in subsection (1) by repealing the definition of "person" and substituting the following:

> **"person" includes an employee, employer, employers' organization, trade union and council of trade unions, but does not include, except for the purposes set out in subsection (3), a person in respect of whom collective bargaining is regulated by the Canada Labour Code;**

(b) in subsection (1) by repealing paragraph (b) of the definition of "strike" and substituting the following:

> **(b) a cessation, refusal, omission or act of an employee that occurs as a direct result of, and for no other reason than,**
>
> > **(i) picketing permitted under this Code, or**
> >
> > **(ii) picketing conducted by employees in respect of whom collective bargaining is regulated by the laws of Canada or another province who are locked out or on strike, and**

(c) by adding the following subsection:

> **(3) For the purposes of paragraph (b) (ii) of the definition of "strike" in subsection (1), the definitions in subsection (1) are to be read as though the definition of "person" did not exclude a person in respect of whom collective bargaining is regulated by the *Canada Labour Code*.**

that there are no substantive changes to the language in s. 57, we support the proposed changes to the Code.

This amendment would, we suggest, resolve the interpretative issue the Board faced in *VSY*. At the same time, it would mean that provincially regulated employees could respect a federally regulated picket line (without fear of that act being deemed an illegal strike) because the federally regulated picketing would not be picketing that is "prohibited by this Code".

Conclusion

Unions are key to our economic success

Collective bargaining is one of the foundations on which civil society is built. Access to collective bargaining "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."[12]

The right to organize and bargain collectively also provides concrete and measurable economic and social benefits to all British Columbians. Unions, for instance, have been at the forefront of law reform measures that improve the working lives of all employees. Our union was instrumental in passing the "Westray" amendments to the Criminal Code, which makes employers criminally liable for negligence which results in the death or injury of employees. We also successfully lobbied for the introduction of the Wage Earner Protection Program Act, which provides funds for employees whose wages remain unpaid by an insolvent employer. These gains – which benefit all British Columbians – were the result of workers organizing and using their collective voice for positive change.

[12] ***Health Services and Support – Facilities Subsector Bargaining Assn.* v. *British Columbia*, [2007] S.C.J. No. 27.**

For unionized workers, the economic value of collective bargaining could not be more clear. BC union members make on average $5.39/hour more than their non-union counterparts. Unionization also narrows the systemic wage gap between men and women, with female union members earning on average $6.84/hour more than their non-union female counterparts. The impact on Indigenous workers is similar, with Indigenous union members making on average $6.51/hour more than non-Indigenous, non-union employees.[13] Thus, unions not only make for better paying jobs, but they help mitigate systemic wage disparities. Closing these wage gaps is not just the right thing to do but makes for sound economic policy: study after study shows that income inequality negatively affects economic growth and its sustainability. A thriving trade union movement is key to our province's economic success.

A modern Labour Code for a modern economy

While the 2019 amendments to the Code were a significant step toward rebalancing the relationship between unions and employers, it is the very structure of our labour relations scheme which must evolve to keep step with the realities of modern workplaces and today's workers. Our current system – nearing a century old – in many respects fails the workers in most need of collective representation.

The economic security of British Columbians depends on a thriving economy that generates good jobs that sustain families and communities. That, in turn, requires a robust Labour Relations Code that fosters the employment of workers in economically viable businesses. This also requires a Code that "adapt[s] to changes in the economy"[14].

Some of the recommendations above are simple fixes. Others require bold change. But as the Minister has said, a "strong, sustainable, and inclusive economy in British Columbia is impossible without a strong and resilient workforce where people are the

[13] **"The Union Advantage for Provincial and Territorial Breakdown." (n.d.). *Canadian Labour Congress*.** https://web.archive.org/web/20190312163818/http://canadianlabour.ca/why-unions/provincial-and-territorial-breakdown/british-columbia

[14] **Section 2(d) of the British Columbia *Labour Relations Code*, R.S.B.C. 1996, c. 244.**

core focus."[15] Our proposals are intended to support that vision of a robust and modern economy which recognizes and respects the inherent dignity of workers.

We thank the Review Panel for the opportunity to make these submissions.

Scott Lunny
Director, District 3, United Steelworkers

[15] **Mandate letter to the Minister of Labour. Government of British Columbia, December 7, 2022.** https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/lbr_-_bains.pdf

UNITED STEELWORKERS
UNITY AND STRENGTH FOR WORKERS
LOCAL 1-1937

UNITED STEELWORKERS, LOCAL 1-1937
Affiliated with AFL-CIO-CLC
SERVING MEMBERS THROUGHOUT COASTAL BRITISH COLUMBIA

March 22, 2024

Re: Labour Relations Code Review Panel

Dear Panel Members,

Our Local Union is very diverse and the operations in which we represent members are spread across a vast geographic area as far north as Dease Lake, Terrace, and Haida Gwaii on down the coast to the Lower Mainland and in all areas of Vancouver Island.

We represent over 5000 workers in a range of sectors, including Forestry, Manufacturing, Mining, Aquaculture, Agriculture, Transportation, Casinos, and the Public Sector. Roughly 70% of our membership works in the forest industry.

Our submission, while primarily focused on the coastal forest industry, addresses important rights forest industry workers need in order to maintain their family-supporting jobs, collective agreement rights, and the ability to collectively bargain in a changing forest industry landscape.

Some of the issues we address may be unique to coastal forestry workers (both organized and unorganized) but are no less important than others you will consider in this process; we hope you will give your time and serious consideration to these important issues. They include:

- Sectoral Bargaining;
- Successorship Rights;
- Common Employer Declarations;
- Benefits Continuation; and
- Benefits Information Access.

We appreciate the opportunity to address them with you in writing and in person at the regional meetings that have been set.

Yours Sincerely,

Brian Butler
President
United Steelworkers, Local 1-1937

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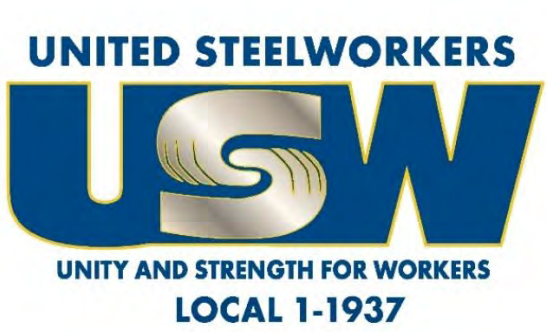

SUBMISSIONS TO THE MINISTRY OF LABOUR
LABOUR CODE REVIEW PANEL
MARCH 22, 2024

Submitted by:

United Steelworkers Local 1-1937

United Steelworkers Local 1-1937 ("Local 1-1937") is an amalgamated Local Union that proudly represents over 5000 men and women in all sectors of the economy, but primarily in the forest industry. Our Local Union resides inside a large geographic area that encompasses all areas of coastal British Columbia including all of Vancouver Island, all coastal islands including Haida Gwaii and the mainland coast from the Alaskan State border south to the Washington State border.

BACKGROUND:

In 2003, Don Munroe was appointed by government as a binding mediator to bring an end to a massive coast-wide forest industry strike. Since that time, and as a result of that process, the coastal forest industry has changed dramatically from being based on stable integrated licensees, as it was prior to 2003, to the contractor model we have today.

Since 2003, the industry has changed from one of stable integrated forest companies (Fletcher Challenge/BCFP, Doman, Pacific, Interfor, Macmillan Bloedel/ Weyerhaeuser) to one that divided private lands and crown lands, with most crown forest licensees consolidated under Western Forest Products. The industry, both on private lands and crown lands, was allowed to contract out its work to contractors, many of whom had never worked in a Unionized environment or under a collective agreement.

This new model for the BC coast has been extremely detrimental to labour relations for a number of reasons. While too many to list, we will identify some of the most detrimental effects of the contractor model and the need for changes to the Labour Code as a result.

CHANGING INDUSTRY MODEL & THE IMPACT ON COLLECTIVE BARGAINING

Prior to 2003, most forest companies bargained through an accredited organization, known as Forest Industrial Relations (FIR) while Local Unions of the IWA/USW on the coast bargained as a single unit. Since that time, all major coastal licensees have left industry-wide bargaining under FIR and have bargained independently. To try and hold sector bargaining together, and for the benefit of good labour relations, the Union has asked contractors to sign "me too" agreements. Under these agreements, contractors can forego bargaining and simply agree to abide by the terms of the largest collective agreement on the coast, which is currently between Western Forest Products (WFP) and the United Steelworkers Local 1-1937 (USW).

Since 2010, most contractors have signed onto the WFP collective agreement via a "me too" agreement. Those that don't are usually larger independent companies, which are either licensees themselves or are not dependent on licensees (for example Teal Jones, a licensee on TFL 46),

or the five operations of Terminal Forest Products in the Lower Mainland. While they bargain independently, their collective agreements virtually mirror the WFP agreement as the USW pattern bargains with them following its bargaining with WFP.

The problem with this approach is that, while the contractors are asked to voluntarily sign the “me too” agreement, they are not required to. Serious labour relations problems and many labour disputes would result if every small contractor decided to bargain independently. For context, Local 1-1937 represents 3500 members in forest industry operations on the coast. The vast majority of these operations have always signed “me too” agreements. If that majority were to reject the “me too” process, it would be financially and logistically impossible for Local 1-1937 to conclude negotiations with each of the contractors independently. It is important to note that most contractors are small and have had no experience in negotiating collective agreements.

In collective bargaining with WFP in both 2014 and in 2019 - there were attempts to undermine the “me too” process when certain lawyers, associated with WFP, urged contractors to not sign “me too” agreements. In both bargaining years, the Union found communications urging contractors not to sign “me too agreements” and addressed the matter directly with WFP during bargaining. When we approached WFP regarding their possible involvement, they ultimately agreed to support the “me too” process and to urge their contractors to sign the “me too” rather than give notice to bargain directly with the Union. This has staved off the pending labour problems for the time being.

If the past gives any indication of the future, we expect another attempt this year (2024) to disrupt bargaining on the coast by certain anti-union forces, who seek to undermine the established process and bring chaos to labour relations and collective bargaining.

In the early 2010s, coastal contractors talked to our Union about the need for a level playing field. In particular, they were concerned about situations where one contractor had an advantage over another when it came to labour costs. The Union agreed and set to work on ensuring no contractor would have an unfair advantage when bidding for the same work. After all, our members work for Licensees as well as contractors.

The level playing field was achieved over the past 10 years by ensuring local agreements with contractors did not give advantages to one contractor over another and by negotiating collective agreements that ensured equal costs for all contractors (including the same wages, health and welfare plan, pension plan and terms and conditions for work).

The benefits of the current system are that it has created a level playing field for coastal contractors, which allows companies to bid on work, knowing their costs are the same as the

contractors they compete with for the available work. Licensees also benefit by knowing what the labour costs will be when they engage a contractor.

The benefit to the Union's members is uniform collective agreement terms, including having the same benefits, pension and wage provisions, which ensure members maintain the same standard of living and ensure there is no disruption to their wages, health and welfare benefits and pension contributions even if they were to change forest industry employers.

For the Union itself, it allows for orderly labour relations that can be managed in a way that benefits all parties concerned.

IMPACT ON ENFORCEMENT OF COLLECTIVE AGREEMENTS

The enforcement of collective agreements becomes increasingly difficult when the number of contractors in the forest sector grows as it has since 2003. As already mentioned, small contractors are less sophisticated, and many have not previously been involved in collective bargaining. Many have very little knowledge of the collective agreement and the provisions within it.

Moreover, it is easier to isolate and intimidate workers, the smaller the contractor is; where there is no longer strength in numbers, workers are more easily prevented from exercising their rights. The combination of less sophisticated and sometimes very aggressive employers has led to the number of grievances skyrocketing for the Union, notwithstanding the numerous violations that occur daily but are not advanced to arbitration because they are unreported or because no members are willing to testify because of intimidation.

Even in clear-cut violations of the collective agreement, which are numerous, the contractors (many backed by the licensees who should not be involved in the contractors' labour relations) drag out grievances to arbitration that in the past were readily resolved.

Our Union has also experienced several cases where the contractors have had arbitrators rule against them after which they simply ignore the award. When they are forced back to the arbitrator and a consent award is issued, they later ignore the consent award. This type of action by an employer was unheard of prior to the change from the integrated forest company model to the contractor model.

THE UNINTENTED IMPACT OF DRIPA & THE NEED FOR SECTORAL BARGAINING IN THE COAST FOREST INDUSTRY

Following the government's adoption of DRIPA in BC, WFP has begun a process of creating Limited Partnerships (LPs) with First Nations on the government-issued Tree Farm Licenses (TFLs).

The first LP (Tsawaqin Forestry LP) was created between Western Forest Products and the Huu-ay-aht First Nation on TFL 44, near Port Alberni. Following its creation, when it came to bargaining in 2019, two of the five largest contractors signed Me Too Agreements. The other three gave notice to bargain independently. All three ended up in labour disputes that lasted two months longer than the strike against WFP.

A second LP is now being created on TFL 39 Block 2 in the Mid-Island area, between WFP and 4 Nations that are a part of the Nanwakolas Council. The LP is expected to be formalized by the end of March 2024. WFP has already given notice it will not include the new LP under its bargaining structure, thereby forcing USW Local 1-1937 to bargain a further collective agreement with another corporate entity, and further splintering labour relations in the industry.

Moreover, in meetings with Western Forest Products President & CEO Steven Hofer, he has repeatedly advised the USW that WFP intends to create an LP in every TFL they are licensed to manage.

Essentially this means WFP is being broken up into individual companies in the forestry side of the business. While no LPs have been created on the manufacturing side of WFP, there is every reason to believe they will follow in the forestry's footsteps.

This process, in addition to the increased reliance on contractors generally, will break up the core of the coastal industry into smaller and smaller pieces, which will create unworkable conditions for collective bargaining and the administration of collective agreements.

For the coastal forest industry to avoid devolving into an unworkable labour relations situation, the Union believes a sectoral bargaining structure is necessary. We strongly believe new legislation is needed for the creation of an industry body (weighted coalition) that would bargain with the Union as a whole.

The creation of such a body would need to ensure there is ample time for consultation with all parties involved and a review of sectoral bargaining models and experience elsewhere in Canada, and around the world, to find the best solution possible.

While too late for bargaining in the coastal forest industry in 2024, it is crucial that legislation be developed now so that it can be enacted before the next round of negotiations. Otherwise, labour relations in the industry will certainly continue to deteriorate.

We ask that the government establish a single-issue commission as soon as possible to consult on the implementation of sectoral bargaining to address changing workplace structures. This must include consideration of the coast forest industry.

IT IS TIME TO ENSURE SUCCESSORSHIP RIGHTS FOR ALL WORKERS

For too long, those in the forest industry have been treated as second-class workers; their jobs and collective agreement rights in tenure and volume transfers are not protected by successorship rights. During the most recent Labour Code Review in 2018, the Panel suggested an Industrial Commission be formed to consider this issue.

The Commission was formed and looked seriously at this matter. For the most part, it supported Local 1-1937's appeal for a legislated Code amendment to grant forestry workers the same access to successorship rights available to other workers in this province.

However, as of the time of writing, the government has failed to act on the very clear recommendations of both the highly respected Vince Ready and Amanda Rogers.

Tenure Transfers

The government has explained this inaction by stating some First Nations groups objected to forest workers having successorship rights in a Tenure transfer, which occurs where government takes back tenure rights and redistributes them. We do not find that to be a sound reason for the government to ignore the reasonable recommendations of the Commission regarding successorship rights in the industry. In fact, Mr. Ready and Ms. Rogers thoroughly reviewed the law and determined that allowing for successorship rights for forest workers in transfers of tenure and volumes did not affect the rights and title of any Nation involved.

It is clear, no legislation will be enacted that will be supported by 100% of First Nations, however, it is important to note not all First Nations disagreed with the concept of successorship. Moreover, those that did, objected for business reasons, as some employers do; our view is that these objections are not about impacts on rights and title.

Whatever rights may be at play, they do not automatically trump the Charter rights of our members. The Local Union views the issue as one of workers' rights versus the right of a company

to contract out work that would otherwise be protected. If workers had successorship rights, they would continue to do the work they have performed (many for decades); where they do not have successorship rights, the Nation can contract out the work non-union. It does not go unnoticed that the legal firms that are engaged by those Nations that opposed successorship rights for forest workers are in many cases also legal firms that represent forest industry employers generally.

The desire to avoid a Unionized workforce is an economic decision; it is not a question of rights and title in our humble opinion. Therefore, the Union seeks the strong support and a firm and reasoned recommendation from this Panel supporting successorship in tenure and volume transfers in forestry. This would be helpful in informing the government of the rights workers ought to have in our sector.

While the government has thus far failed to protect workers through the enactment of successorship rights, it has recognized the importance of the issue. For example, it stated that, while it currently has no plans to transfer any tenure to Nations, if it did, it could deal with successorship as a policy at the time.

It is widely perceived that the Licensee for TFL 46 (West Coast Southern Vancouver Island) is not taking any steps towards reconciliation with the area First Nations, and we expect government may soon buy out the Licensee and transfer the rights to the area's First Nations.

With no legislation in place, we have no assurance that successorship rights for our 109 members who work for five contractors on the TFL will be recognized.

<u>Volume Transfers – A Separate But Important Issue</u>

A separate but very much related situation regarding successorship rights takes place routinely in coastal BC when a licensee fails to harvest their Annual Allowable Cut (AAC) over a five-year cut control period. Where a licensee does not harvest its AAC within five years, the government takes the volume not harvested and distributes it to others (typically to area First Nations) without also transferring the corresponding rights of Union workers to harvest the volume awarded. It is therefore almost certainly harvested by non-union workers with no tie to the land (often with no ties to the region) and leads to lost work for Union members who work and live in the area.

One consistent and troubling example of a reason companies fail to harvest their AAC is the government not approving harvesting permits, which is beyond the control of the company and our members. In such cases, it makes no sense for the government to then take away harvesting rights from the company (and our members) only to award the volume to a Nation that opposed the harvesting permit. While companies can ultimately make agreements to receive the volume

of logs now harvested non-union, the Union and its members are stripped of the work and face longer layoff periods and the loss of income, benefits, and pension contributions they would have otherwise earned for their families (not to mention spent in their communities). This has become an unjustifiable avenue for work to be contracted out to non-union operators.

We urge the Panel to recommend that government re-examine the Ready/Rogers IIC Report and the law regarding rights and title and legislate successorship rights in both tenure transfers and volume removals related to not harvesting the AAC for reasons beyond the companies' control.

We also urge the Panel to review our 2018 submission (at the end of this submission) and reaffirm our request that the Panel review the background on the creation of BC Timber Sales which stripped USW jobs in coastal BC and make recommendations to government to have all bidding for BCTS work, that was stripped from USW workers, be limited to bids from USW certified contract companies as is done in the construction industry for crown projects.

COMMON EMPLOYER (Section 38) – REMOVING THE DISCRETION

USW Local 1-1937 renews its request below for a review of Common Employer provisions in Section 38.

The treatment of Common Employer Applications from Unions at the BC Labour Relations Board has been one-sided in favour of employers for too long.

Where the USW has made application in instances of a "double breasted" employer ("one union operation and one non-union operation owned by the same principal and closely tied") which routinely transfers equipment and employees between the two operations, we have been unsuccessful in convincing the LRB that they should be treated as a single employer.

A worker's right to join a Union is also very much impacted in the contractor model now in place on the coast. Contractors that are Unionized are avoiding the Union by setting up a second company that is owned by the same people, often using the same equipment, and often sharing the same employees. They promise Unionized workers that they can go work for the non-union company if there is no work on the Union side, which some workers may see as a benefit. However, they are often working with no overtime provisions, no access to Union representation and rely on the health and welfare benefit layoff coverage of the Union side of the operation.

The language of Section 38 states “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”. This language leaves too much discretion to the board in our opinion and needs to have some clear guidelines to ensure fairness.

The reason why employers in the forest industry double-breasted their company is very clear; they wish to avoid the Union and the collective agreement in areas where they believe they don’t need a Union affiliation to bid for the work.

We urge the Panel to find balance and fairness by amending Section 38 to remove the discretionary nature of common employer applications. Areas that can add some certainty in relation to the forest industry are when both businesses are in the same industry, regularly share or transfer equipment between businesses and transfer employees between businesses.

BENEFIT CONTINUATION

Under Section 62 of the Labour Code, an employer must facilitate the continuation of benefits provided the Union pay the required premiums. However, the cost of premiums makes this untenable in many cases. In the 2019 strike between USW and Western Forest Products (WFP), and related contractors, the Union asked for benefits to continue during the strike provided the costs for those benefits be gradually repaid by employees upon their return to work following the dispute, as had previously been the practice between the parties. WFP did not agree.

During the strike, a Union member passed away. As benefits had been discontinued, his widow was ineligible for life insurance (at the time $120,000). This was a devasting blow to the widowed spouse.

The Code must ensure provisions of H&W Plans continue during labour disputes, including life insurance. Lack of access to benefits during a labour dispute can have severe consequences, potentially leaving workers and their families without essential coverage, thereby jeopardizing their health. The disruption in benefits may also lead to the reinstatement of pre-existing conditions clauses once a collective agreement is signed, further complicating access to coverage post-dispute.

To ensure workers are covered, the Code should be amended to provide that Employers must continue to pay premiums for benefits, provided they can recover those expenses through payroll deductions once the labour dispute ends.

In order to ensure Employers are not put to unreasonable expense, Unions could be liable to repay premiums for any employees who did not return to work following the labour dispute, or who left the employer's employ prior to fully repaying those premiums. The Union, in turn, should be granted the right to recover those costs as against the former employees, should it choose to do so.

We seek a change in the current Code provisions that would make it mandatory for an employer to continue benefits during a strike where the Union commits members to repayment of those benefits, through employee payroll deductions following the labour dispute.

BENEFIT INFORMATION REQUIRED PRIOR TO OR DURING COLLECTIVE BARGAINING

The Union seeks to have provisions in the Code that allow for detailed benefit information to be supplied by the employer to the Union when requested prior to or during collective bargaining.

One of the primary challenges we encounter is the delay or refusal by Employers in providing Unions with access to all necessary benefits documents essential for effective negotiations.

Despite Unions being entitled to this information to effectively represent their members, employers often refuse to provide it, or it takes months, and in some cases over a year, to obtain even some of the documents.

These delays in producing documents significantly impede the bargaining process and undermine the Union's ability to negotiate benefits effectively.

Moreover, this creates an unfair and unbalanced situation in bargaining as the employer has easy access to all the required information while the Union does not.

At times, the Employers cite privacy law to explain why they are not providing the requested information. This can lead to unnecessary and costly applications to the Board to obtain an order for production.

We ask the Panel to recommend changes to the Code to ensure that benefits information be provided in a timely manner when requested by Unions.

CONCLUSION

In order to shift towards a more fair and balanced labour relations regime in British Columbia, we believe the following are necessary:

1. The creation of a commission to study and implement sectoral bargaining in the Coastal Forest Industry.

2. The expansion of successorship rights to the forest industry for tenure and volume transfers through legislation.

3. A recommendation that all bidding for BCTS work, that was stripped from USW workers, be limited to bids from USW certified contract companies.

4. Greater access to common employer declarations to protect the benefits workers have fought for.

5. An amendment compelling employers to continue paying benefits premiums during labour disputes, provided employees repay those premium through reasonable payroll deductions upon return to work.

6. A provision ensuring employers provide Unions with comprehensive information about benefits prior to bargaining.

We thank the Panel for its time and the opportunity to make these submissions, and we look forward to discussing them with you in person.

Sincerely,

Brian Butler

President - USW, Local 1-1937

Relevant & Important Information from the USW Local 1-1937's 2018 submission:

The USW seeks changes to the currently one-sided Labour Relations Code, so that workers retain successorship rights and their collective agreement rights when forest tenure reform and forest tenure and volume transfers are acted on by government.

One glaring inequity that coastal forest workers have suffered is under Section 35 of the Labour Relations Code, where workers have not been granted successorship rights (with their collective agreement rights intact) in the many cases when government reformed forest tenure and/or transferred forest tenure rights since 2001.

It is only fair and equitable that when forest lands change hands, and those same forest lands continue to be harvested by a new owner or licensee, that workers should have successorship rights and their collective agreement rights maintained.

In numerous cases during the previous government's time in office, lands were transferred out of Tree Farm License's (TFL's) and into BC Timber Sales (BCTS). Unionized workers have been stripped of their jobs (successorship) and their collective agreement rights because it was deemed a "business" was not sold to the new steward of the Crown Land.

The current language of Section 35 of the BCLR Code states "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". In the forest industry in BC, the Crown Forest tenure is the primary asset of the business, yet it is not viewed as being the business (or even a part of the business) to trigger successorship under Section 35. The forest industry is a unique and renewable industry that does not operate like a normal business and as such should have protections unique for its workforce when new management of the major asset (the Crown Forest tenure) is put in place. It should not matter if the new entity harvesting the Crown Forest tenure buys logging equipment from the previous entity, has its own logging equipment, or hires a contractor to harvest the timber; successorship rights need to apply to protect the workforce.

The USW believes, by extension of the foregoing, successorship rights for workers should not be lost when government resolves matters of First Nations treaty rights or when the government makes land settlement agreements with First Nations. We have the same belief regarding the transfer of forest land between licensees and when contractors sell Bill 13 rights to licensees.

These types of settlements should not be made on the backs of unionized workers, who have been the only stakeholder that have had their rights taken away when the previous government negotiated settlements that removed a defined forest land area or cubic metre volume of timber from a TFL or Timber Supply Area (TSA) or through BCTS.

Our Union has long held a commitment supporting reconciliation and strongly believes in more equitable opportunities for all workers, including First Nations workers, and therefore wants to see all parties dealt with fairly in the process of reconciliation. Why should workers lose their jobs when the group gaining rights to the forest land hires a contractor to harvest the forest themselves?

It is without doubt that the loss of jobs in coastal BC forests due to the lack of successorship rights has been significant for unionized workers and has had detrimental effects for themselves, their families, and the rural communities that they live in.

Applying successorship rights to transfers, sales or settlements involving Crown tenure promotes continuity and security for the workers and their families and provides the same for the community and small business that succeeds when taxes and disposable income remain in the community. It is often found that employees of non-union contractors who bid for work through BCTS or from a licensee are far more transient than the workforce that is tied to the land base by certification or those protected by their employer's Bill 13 rights.

We urge the Panel to recommend changes to Section 35 of the code to ensure that forest workers' rights to work and rights to their collective agreement continue when their working land base is transferred, sold, or made part of a settlement to another party, even if no logging equipment or non-timber assets are acquired as part of the transaction.

We also would urge that you recommend that successorship rights should apply to any BCTS lands that were once harvested by Unionized workers when they are put up for bid under BCTS and where they are removed from the BCTS program and reintegrated with existing or new TFL's in the future.

BB:pb
usw1-1937

Date: March 22, 2024
ATTN: Labour Relations Code Review 2024

Dear Panel Members,

The University of Victoria Labour Law Club is a group of law students who are passionate about workers' rights. We seek to create a space for students to gather, increase awareness of current issues in labour law, and engage in advocacy and research. Thank you for the opportunity to share our thoughts and recommendations with the Labour Relations Code Review Panel.

The BC economy and BC workplaces have undergone dramatic changes in the last few years, especially in the wake of the COVID-19 pandemic. It is imperative that the *Labour Relations Code* evolves in step with the changing workplace. Otherwise, workers' abilities to advocate for themselves and collectively bargain with their employers will be eroded.

On behalf of the Club, we are pleased to submit these recommendations as part of the Labour Relations Code Review Panel 2024.

Sincerely,

Ariana Agouridis and Chris Fenje
Co-Presidents of the UVic Labour Law Club
uvlabourlawclub@gmail.com

Protect workers against AI, virtual, and mechanized replacement workers.

In labour relations, workers' ultimate power resides in their abilities to withhold their labour and stop production. BC has progressive legislation that prevents employers from hiring replacement workers during strikes (s. 68 of the Code). This legislation protects workers' ability to engage in meaningful strikes and is a necessary component of the right to strike.

While this legislation is good, it needs to be modernized to clearly prohibit employers from using technological tools (such as generative AI) to replace the work of struck workers. This legislation should be drafted broadly so that, in addition to capturing tools such as generative language AIs, it also captures any type of mechanized or automated methods that replace the work of struck workers.

Workers' right to withhold their labour is Constitutionally protected by section 2b of the *Charter* [*Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4*]. The *Code* must protect this right from being hollowed-out by the application of new technologies.

Incorporate UNDRIP into BC labour relations.

Incorporating the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into labour relations in British Columbia presents an opportunity to recognize and respect the rights and legal orders of Indigenous Nations while ensuring fair and just workplace relationships within the context of reconciliation. Reconciliation is advanced when we acknowledge and respect Indigenous legal orders at every level of the law.

As there is currently a mandate for the BC government to update laws to incorporate and keep space for Indigenous knowledge and traditions, there is an opportunity to incorporate a *Code* provision that accommodates the legal orders of Indigenous nations in the province. The provision does not need to specify what those legal orders are, but to leave room for them to be recognized under the *Code*. This could be coupled with efforts to strengthen those legal orders as they relate to workplace relationships and labour.

Develop sectoral bargaining to accommodate modern workplace dynamics.

Today, private-sector workers occupy often-uncertain locations on a global production and supply chains that link transnational corporations, their divisions, and subsidiaries to a host of local contractors, brokers, and suppliers. Previously, workers employed by a single employer had many shared traits and interests, such as language, culture, politics, history, legal rights, managerial oversight, and integrated work processes. However, in the global economy, workers have lost much of their common ground as they have become increasingly atomized and fragmented. The result is that private sector workplaces are notoriously difficult to organize and remain organized. Without sectoral bargaining, gig workers and migrant domestic workers have virtually no options for unionization due to the lack of shared physical workplace and direct employer.

As our modern workforce is increasingly fragmented and stratified, the genuine ability for shift and gig workers (e.g. Starbucks, uber, etc) to unionize–and remain unionized–becomes less and less salient. In private sector shift work, like Starbucks, we have seen a recent wave of organizing drives, resulting in some individual stores achieving certification. However, the high turnover of employees in this work and the ability of large corporations to shut down the flagship stores that do unionize will likely result in higher rates of decertification.

Sectoral Bargaining can address these problems in various ways. Sectoral bargaining allows workers across different companies within the same industry to negotiate collectively on common issues such as wages, benefits, and working conditions. This approach fosters solidarity among workers regardless of their specific employer or workplace, helping to overcome the fragmentation caused by decentralized employment arrangements. It also ensures standardized conditions. By setting industry-wide standards for wages, benefits, and other terms of employment, sectoral bargaining helps prevent a race-to-the-bottom in terms of working conditions. This ensures that all workers within the industry have access to decent pay and benefits, regardless of the company they work for. Further, sectoral bargaining can provide more stability in industries characterized by high turnover rates and instability as it provides a more stable framework for collective bargaining. Instead of organizing individual workplaces or branches, which may experience frequent turnover or closure, workers can negotiate with industry-wide employer associations or through centralized bargaining structures.

Extend picketing rights to remote and virtual workers.

The *Code* regulates the abilities of struck or locked-out workers to picket their workplaces. Picketing allows workers to exert public pressure on their employers to encourage resolution of collective bargaining disputes. The *Code* permits workers to picket in certain contexts and prohibits them from picketing in other contexts.

Many modern workplaces do not resemble the workplaces that existed when the *Code* was drafted. The *Code* contemplates a physical picket line in front of workplaces with physical locations, but it does not contemplate remote workers who live far away from their workplaces, nor does it contemplate workplaces with no physical location.

The *Code* must extend picketing rights to workers who work far away from their workplaces or whose employers do not have a physical location. Modernized picketing legislation must ensure that such workers have the right to establish and engage in virtual/digital picketing, but it must be drafted in a manner that does not undermine the power or the viability of the physical picket line. Modernized legislation must also protect workers who refuse to cross a digital picket line.

Updating the *Code* to include and protect digital/virtual picketing would not be a radical shift; it would merely give a voice to types of workers who did not exist when the *Code* was drafted.

Increase the funding and power of the LRB.

To *Code* protects the ability of BC workers to collectively bargain with their employers. The *Code* acknowledges the power imbalance between workers and their employers, and is the key mechanism for protecting workers' rights in the face of this power imbalance. Solid legislative guardrails are the first step in mediating this unequal power dynamic, but progressive legislation is meaningless without adequate enforcement. In other words, if the rights contained in the *Code* are not quickly, strongly, and consistently enforced, they might as well not exist.

The Labour Relations Board is charged with protecting workers' collective bargaining rights and enforcing the *Code*. Underfunding of the LRB results in seriously delayed or insufficient enforcement of the *Code* and the rights it protects. Inadequate funding resulting in inadequate enforcement is not a neutral problem that equally affects both sides of the employment relationship. Due to the inherent power imbalance between workers and their employers, the burden of underfunding the LRB is borne by workers and their unions.

The government must increase funding to the LRB so that the LRB may enforce the rights within the *Code*.

A corollary of enabling the LRB to enforce the rights within the *Code* is that decision-makers must be empowered to issue meaningful remedies for contravention of those rights. Unfair labour practices, especially those that interfere with workers during the organizing process, are especially destructive. Employers must face strong incentives to behave lawfully, otherwise, interference with union/organizing activity may be seen as a "cost of doing business".

In response to employers engaging in unfair labour practices, the *Code* must make explicit requirements that decision-makers award remedial certifications and issue punitive damages against those employers.

Curtail the "Essential Services" designation in Part 6 of the *Code*.

Workers' power derives from their ability to interfere with production by withholding their labour. The fact that workers' labour is important, or "essential", is the source of their power - that fact should not be used as an excuse to force them back to work. Workers should exclusively wield the power of whether or not to withhold their labour. That is the case no matter what role a workforce plays in our society.

Part 6 of the *Code* seeks to protect the "health, safety, [and] welfare" of British Columbians. Part 6 purportedly accomplishes this objective by empowering the minister to designate "essential services" and deem any strike that withholds those services to be unlawful.

The power to collectively bargain raises standards of living, improves workplace safety, and gives workers a voice - all things that are fundamental to the "health, safety, [and] welfare" of British Columbians. Part 6 interferes with workers' ability to withhold their labour, thereby undermining their ability to collectively bargain. In this way, the operation of Part 6 is antithetical to the values it seeks to protect.

If the government is concerned that a strike will threaten the "health, safety or welfare" of British Columbians, then the solution is to meet those workers at the bargaining table and offer a good deal.

Given the tension between Part 6 of the *Code* and the values that underlie collective bargaining as a whole, Part 6 must be seriously reformed (or simply abolished). Ministerial discretion for the designation of "essential services providers" must be more clearly prescribed, or eliminated altogether, so that it cannot be vulnerable to political forces and manipulation.

CDWCR

Vancouver Committee for Domestic Workers and Caregivers Rights
Cedar Cottage PO Box 37033 London Drugs, 5639 Victoria Drive, Vancouver BC V5P 3W0
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Submission to British Columbia Labour Relations Code Review March 22, 2024

Background of CDWCR

Established in 1992, the Vancouver Committee for Domestic Workers and Caregivers Rights (CDWCR) is a community-based, non-profit organization that provides assistance to foreign domestic workers and caregivers in seeking improvements to their employment conditions and immigration status.

CDWCR's mission is shaped by the belief that foreign domestic workers and caregivers provide valuable service to Canadian families and contribute to the economic, social, cultural and polical fibre of the Canadian society. CDWCR aims to foster justice and equality and collectively empowers caregivers and domestic workers. CDWCR values the importance of inclusiveness and diversity in promoting human rights.

CDWCR, through its Caregivers Network (Care-Net) Project holds series of workshops for caregivers and domestic workers on various topics such as immigration, employment standards, financial basics, and self care. The goals of these workshops are to educate caregivers particularly those newly arrived caregivers under the Temporary Foreign Worker Program (TFWP) and proactively assist them while they are settling and adjusting in Canada.

CDWCR membership includes caregivers, former caregivers and domestic workers, and community supporters. The organization's board of directors is composed primarily composed of individuals who have firsthand experience as caregivers or domestic workers.

CDWCR

A Brief Timeline of Migrant Caregivers in Canada

Canada's Live-in Caregiver Program (1992-2014) — This was Canada's longest-standing care worker program, which allowed migrant workers to enter Canada on a closed work permit that tied care workers to their one 'sponsoring' employer. Labour Market Impact Assessments (LMIA) were required of employers to demonstrate that no Canadian worker was available for the job. Migrant care workers had to live in their employers' homes and complete 24 months of eligible work within 48 months. After meeting this 24-month requirement, care workers could then apply for permanent residency.

Canada's Caregiver Program (2014-2019) — This program was introduced by the Conservative government in 2014. The Program was divided into two categories or classes: the Caring for People with High Medical Needs Class and the Caring for Children Class. The live-in requirement was dropped for care workers, allowing them to live outside of their employers' homes. However, a new limit on the number of PR applications was set at 5,500, with 50 percent of this limit allocated to each class of applicants. LMIAs were still required of employers, and care workers were still required to complete 24 months of work to be considered eligible to apply for PR. New educational and English language requirements were also introduced with care workers now needing a Canadian Benchmark Level (CBL) score of 5 and the equivalent of one year of post-secondary education. As Natalie Drolet (2016) notes, those who had entered Canada under the earlier program remained eligible to work but were potentially ineligible to obtain permanent residency under these new requirements.

Canada's Home Childcare Provider Pilot and Canada's Home Support Worker Pilot (2019-2024) — This program was introduced by the Liberal government in 2019. The two pilots maintain the 5,500 PR application cap overall, with 50% of this cap allocated to each pilot program. In 2023, sub-caps were implemented, establishing a maximum number of applications: 1,650 for applicants who have not yet completed their work requirements necessary to gain PR ("Gaining Experience" category) and 1,100 for applicants who have completed their work requirements necessary to gain PR ("Direct to PR" category). In 2023, IRCC also reduced the work requirement from twenty-four months to twelve months. Other features of this newer program include the possibility of bringing children on student visas and spouses on work visas. Migrant care workers are also granted occupationally-specific work permits, allowing them to switch employers within the sector.

Canada's Interim Pathway (2019) — This program was a short-lived 90-day window in 2019 for migrant care workers to apply for PR if they were caught between earlier program changes. It was a temporary measure to combat confusion and a lack of information for migrant care workers eligible for PR.

A Brief Timeline of Migrant Caregivers in Canada (continued)

Despite changes to Canada's migrant caregiving programs, CDWCR continues to witness migrant care workers' struggle to navigate these changes. Many workers still face challenging conditions, including being paid below the minimum wage, enduring workweeks extending beyond 40 hours, and working unpaid overtime. Employers often demand that they cover various fees, and in some instances, workers are compelled to perform tasks for the employer's friends and family without compensation. Furthermore, threats to their immigration status are not uncommon, leveraging their vulnerable position for compliance. The high cost of living and housing in Canada exacerbates these challenges, forcing most care workers into live-in arrangements with their employers. This not only infringes on their personal space and freedom but also ties them more closely to their workplace environment, blurring the lines between work hours and personal time, and deepening their dependency on their employers.

Migrant Care Work is Especially Precarious

Several attributes contribute to the heightened vulnerability and precarity of migrant care workers. These include:

- Employment within private residences,
- The inherently personal and intimate yet markedly unequal relationships between employers and employees,
- The perception of care/domestic work as traditionally "women's work" with low societal status and value, and
- The isolation and lack of visibility of workers.

These factors collectively make the regulation particularly challenging, as there remains a persistent belief that private homes should remain beyond the scope of labour regulation and inspection. Conducted away from public scrutiny and beyond the reach of regulatory authorities, the work performed by migrant caregivers often remains informal and unregulated, leaving domestic workers without the labour rights afforded to other occupations. The nature of the employment relationship between caregivers and their employers is significantly imbalanced, a disparity that can be intensified by the caregivers' social positioning, including class, gender, and race. An illustrative case is a BC Human Rights Tribunal decision, ***PN v. FR and another***, which concerned a Filipina care worker who, after arriving in Canada from Hong Kong on a business visa with her employers, was subjected to sexual, physical, and verbal abuse. Required to work long hours without pay, kept in isolation, she was termed a "virtual slave" by the Tribunal Member. The worker was compensated $5,866.89 for unpaid wages and awarded $50,000 for damages related to dignity, feelings, and self-respect—the highest such award in the Tribunal's history.

Legislative Precariousness

Virginia Mantouvalou's concept of legislative precariousness[4] highlights the vulnerability that stems from certain groups of workers being explicitly excluded from or inadequately protected by labour laws. This phenomenon is particularly pronounced in the employment relationships of domestic and migrant care workers, where an inherent power imbalance places workers in a position of subordination to their employers—a situation labour legislation is intended to remedy. However, for domestic and migrant care workers in British Columbia, the legislative framework often exacerbates rather than alleviates these imbalances, entrenching their precarious status.

The precarious legal status of migrant care workers in British Columbia significantly amplifies their vulnerability. Often employed in private residences due to their temporary migrant status, these workers fall through the cracks of regulatory protection. This leaves them exposed to potential exploitation and hinders their capacity to assert their rights. The current legal structure in British Columbia does not provide adequate safeguards against abuse by unscrupulous employers, who exploit these gaps with little concern for repercussions.

Upcoming findings from the Understanding Precarity in British Columbia's Migrant Care Worker Project indicate that many migrant care workers in the province face dire conditions. Even after a decade of adapted "pilot" programs, migrant care workers typically receive minimum wage or lower, are expected to work unpaid overtime, and due to high living costs, have no real option to live outside their employers' homes.

Both the federal and provincial governments' reliance on a complaint-based system for addressing violations places an undue burden on individual migrant workers. They must be aware of their rights and bear the responsibility of reporting any infractions. As illustrated by the case of PN v. FR, in severe situations, migrant workers might be forced into lengthy, costly legal battles to seek redress, highlighting a critical need for reform in the approach to protecting these vulnerable workers.

Migrant care workers and domestic workers are extremely vulnerable to employer exploitation and abuse unless they are provided with information and advocacy to enforce their rights as workers. Non-profit organizations like the CDWCR play a key role in advocating for the rights of workers in British Columbia. Both through community advocacy, educational materials, and policy recommendations, organizations such as CDWCR demonstrate the life-changing possibilities for precarious workers when they have a centralized body to turn to for support, advice, and advocacy.

4 Mantouvalou, V. (2012). Human rights for precarious workers: The legislative precariousness of domestic labor. Comp. Lab. L. & Pol'y J., 34, 133.

Migrant Caregivers Do Not Have Meaningful Access to Collective Bargaining

The transition of migrant care workers into the Canadian workforce, especially within British Columbia, highlights a critical need to address jurisdictional gaps regarding their rights as workers. Upon entering Canada through federal immigration programs, their employment status transitions to the provincial jurisdiction, which should inherently afford them the comprehensive rights and protections outlined in British Columbia's labour laws. This jurisdictional transition is crucial in ensuring that migrant care workers are protected through the Employment Standards Act (ESA), thereby guaranteeing access to fundamental employment rights such as minimum wage, overtime pay, statutory holidays, and job-protected leaves, among other protections.

Equally fundamental is the right to unionize and engage in collective bargaining, a cornerstone of Canadian labour relations that is crucial for promoting fair workplace conditions and ensuring workers have a collective voice in negotiations with employers. For migrant care workers, the ability to form and join unions is essential not only as a labour right but as a critical safeguard against exploitation, enhancing job security and working conditions.

However, a significant barrier exists under the current BC Labour Relations Code, which defines a bargaining unit as one employer and their employees. In the unique employment situations of in-home caregivers and domestic workers, this typically translates to a bargaining unit comprising a single employer and a single worker. This worker, often isolated from others performing similar roles, faces significant challenges in organizing or joining unions due to their unique working conditions.

The BC Labour Code's existing framework around bargaining units thus severely limits in-home caregivers' and domestic workers' ability to collectively organize, further exacerbated by their physical isolation and the dispersion of their workplaces. This isolation makes it challenging for unions and advocacy groups to reach out to, and effectively support, these workers.

Acknowledging and addressing this discrepancy is imperative. Policies and legislative frameworks in British Columbia must evolve to recognize the unique challenges faced by migrant care workers, facilitating their integration into the provincial labour framework and ensuring they have full access to their rights, including the ability to organize and collectively bargain.

CDWCR, alongside a variety of other organizations, has advocated for a solution to care workers' de facto exclusion from unionization through the introduction of a system of sectoral bargaining.

Sectoral Bargaining Would Allow Care Workers to Negotiate Collectively

Adopting a sectoral bargaining approach for migrant care workers aligns with British Columbia's dedication to equitable, respectful treatment across all employment sectors. This strategy represents a necessary step towards ensuring a more inclusive, equitable, and safe labour environment in the province. The current enterprise bargaining model, effective within traditional workplace settings with single employers, does not adequately serve the modern, diversified, and often fragmented labour force. This model disproportionately favors situations where workers are centralized under one employer, leaving migrant care workers and those in sectors characterized by small workplaces or subcontracted industries at a significant disadvantage.

Since 1993, the CDWCR, alongside experts and advocates, has championed the adoption of a sectoral bargaining model for migrant care workers. Given the homogeneity of work performed by individual migrant care workers under strict federal conditions, negotiating sector-wide standards for migrant care work is both appropriate and necessary.

British Columbia has a precedent of sectoral bargaining models, particularly within its public sector. We propose a recommendation for an amendment to the BC Labour Relations Code to facilitate the implementation of a sectoral bargaining model for sectors such as migrant care work, where workers are often individual, isolated, fragmented, and in precarious positions.

A Sectoral Framework for In-home Caregivers and Domestic Workers

This proposal introduces a comprehensive framework for establishing a unified provincial in-home care sector in British Columbia, aimed at enhancing the welfare and working conditions of live-in and live-out caregivers and domestic workers. Central to achieving these goals is the collaborative effort between a newly formed Tri-partite Standards Committee and the expansion of an existing Central Registry. While the registry plays a crucial role in ensuring accountability and facilitating standard enforcement, it represents one of several strategic components designed to uplift the sector.

The framework envisions a sector that is regulated by key employment standards—including wages, hours of work, overtime, living conditions, paid statutory holidays, and vacations—while also laying the foundation for additional benefits such as pensions, health, and welfare plans. The Tri-partite Standards Committee, featuring equal representation from employers, employees, and a neutral chair, will be pivotal in negotiating these standards, ensuring compliance, and addressing grievances.

Enhancements to the Central Registry will support the committee's work by providing a comprehensive database of all engaged households and employment agencies, thereby enabling more effective monitoring and enforcement. However, the essence of this proposal lies in the creation of a collaborative, sector-wide approach that involves all stakeholders in a balanced and fair manner, with the registry serving as a tool to support these broader objectives.

a) Tri-partite Standards Committee

We propose the establishment of a balanced committee with equal representation from employers and employees, chaired by a neutral third party appointed by the Employment Standards Branch. This committee would be the site for the negotiation of labour standards, enforce compliance, address complaints, and oversee the administration of benefit plans.

Employee Representation

To ensure a comprehensive representation on the committee, it is crucial that advocacy groups are prominently included, alongside unions once they are formed. The legislation will specify a fixed number of seats for employee representatives, providing a structured yet flexible approach to their composition and the selection process.

Mandatory Registration

A key initiative for enhancing oversight and accountability involves the compulsory registration of all migrant caregivers and domestic workers, irrespective of their live-in or live-out status. Employers will be required to register with the Central Registry, submitting detailed information about each worker they employ, including names and addresses. To promote a thorough and accurate registry, domestic workers and caregivers will also have the option to self-register. The Central Registry will be managed jointly by the Tri-partite Standards Committee and the Ministry of Labour, ensuring robust supervision and compliance.

Employer Representation

For the sectoral regulation framework to be both legitimate and effective, it is crucial that employers are systematically organized into representative bodies. The government will play a proactive role by mandating the establishment of such organizations within a specific timeline, while also providing the necessary support for their formation. This structured organization of employers is essential for fostering a collaborative and regulated environment that respects the rights and needs of domestic workers and caregivers.

In parallel, to enhance transparency and accountability within the sector, all employers—including householders and employment agencies—will be required to register in the Central Registry. This registry, managed under the careful oversight of the Tri-partite Standards Committee, serves as a critical tool for monitoring compliance and identifying any patterns of non-compliance or abuse. By ensuring that comprehensive and up-to-date information is readily available, the registry aids in significantly improving the quality of monitoring and enforcement efforts, thereby reinforcing the framework's integrity and effectiveness.

Neutral Chairperson

The Tri-partite Standards Committee will be presided over by a Neutral Chairperson, appointed from within the Employment Standards Branch or the Labour Relations Board. This individual's key responsibility is to ensure that the committee's deliberations are conducted impartially, mediating between employer and employee representatives with fairness and integrity.

Criteria for the chairperson's selection will emphasize independence, a comprehensive understanding of labour laws, and prior experience in mediation, ensuring that the chairperson can effectively navigate the complexities of sectoral negotiations without any conflict of interest.

In addition to facilitating committee negotiations, the Neutral Chairperson is charged with the crucial task of overseeing the Central Registry's operations. This role is integral to maintaining the registry's role in enhancing transparency and ensuring compliance within the sector, making the Neutral Chairperson a cornerstone of the sectoral framework's success.

b) Negotiation

Following its formation, the Tri-partite Standards Committee will promptly begin negotiations on labour standards, adhering to strict timelines to ensure efficiency and urgency in addressing the sector's needs. A cornerstone of these negotiations will be the establishment of a binding dispute resolution mechanism. This framework is designed to guarantee compliance with the agreed-upon standards, effectively integrating and respecting the nuances of existing unionized workplace agreements within the sector.

The implementation of set deadlines and a binding dispute resolution ensures that all parties are committed to a timely and fair negotiation process. This approach not only facilitates swift progress but also reinforces the reliability and effectiveness of the sectoral framework in upholding high labour standards.

c) Strengthening and Expanding the Central Registry

The obligation for employers in British Columbia to register domestic workers within 30 days of hiring them is a foundational step towards protecting these workers' rights. However, this requirement currently bypasses workers immigrating through specific channels, such as the Provincial Nominee Program and, notably, the federal International Mobility Program (IMP). Since 2019, the IMP has become a primary route for migrant caregivers coming to Canada, yet these individuals have been inadvertently excluded from mandatory registration, creating a loophole that can leave them vulnerable.

Comprehensive Registry Enhancements:

- **Universal Registration Mandate:** To address this gap, our proposal mandates the registration of all employers and their employed migrant care workers or domestic workers, explicitly including those coming to Canada through the IMP. This measure aims to prevent any abuse by enabling punitive actions, such as the suspension or termination of registrations, against employers who fail to uphold workers' rights.
- **Access to Rights and Protections:** The enhanced registry creates a crucial pathway to provide information on rights and protections to domestic workers, ensuring they are fully informed of their legal entitlements. This is particularly vital for migrant caregivers, who may be less familiar with Canadian labour laws.
- **Comprehensive Oversight and Standardization:** Central to our tri-partite sectoral negotiation model is the registry, serving not only as a key mechanism for enforcement and standardization of employment conditions but also as the foundational platform for forming the Tri-partite Standards Committee. By integrating negotiated outcomes and standardized benefits such as health coverage and pension plans into the registry, we ensure a unified and equitable approach across the sector. The registry enables comprehensive oversight, ensuring that all domestic workers, particularly migrant care workers, benefit from improved employment standards.
- **Enabling Union and Advocacy Group Participation:** Granting unions and advocacy groups access to the registry ensures that the standards are rigorously enforced, allowing these organizations to advocate effectively on behalf of workers and to investigate potential violations of labour standards.

This strategic expansion and enhancement of the Central Registry are designed to close existing gaps in the system, ensuring that all domestic workers, particularly those immigrating through the IMP, are afforded comprehensive protections and support, reflecting our commitment to a fair, transparent, and equitable in-home care sector in British Columbia.

e) Enforcement of Standards

The Tri-partite Standards Committee is vested with the critical mandate to rigorously investigate and address any violations of labour standards and registry compliance. To this end, we recommend the appointment of Provincial Labour Inspectors by the committee, specifically chosen for their expertise in the in-home care sector. These inspectors would wield the same authoritative powers as officers from the Employment Standards Branch, as delineated in the Employment Standards Act, ensuring they are fully equipped to uphold the sector's standards.

To facilitate thorough and effective inspections and investigations, we propose the introduction of a modest payroll contribution from employers within the sector. This funding mechanism is designed to support the operational costs of enforcement activities without imposing undue financial burden on employers.

Moreover, all fines and penalties levied for non-compliance should be channeled back into the Tri-partite Standards Committee's budget. These fines must be set at a level that serves as a real deterrent against circumventing the established standards, thereby reinforcing the seriousness with which these regulations are to be taken.

A Comprehensive Approach

By advocating for this comprehensive approach to sectoral bargaining, we aim to significantly improve the working conditions of migrant care workers in British Columbia, ensuring they are afforded the rights and protections commensurate with their invaluable contributions to our communities.

This model is not without precedent. Legal scholars Sara Slinn and Mark Rowlinson recently published "Bargaining Sectoral Standards: Towards Canadian Fair Pay Agreement Legislation"[4]. This article provides detailed and comprehensive legislative examples for implementing a sectoral framework such as that we advocate for here. Their work could easily be adapted for care workers in British Columbia.

2 Slinn, Sara and Rowlinson, Mark, "Bargaining Sectoral Standards: Towards Canadian Fair Pay Agreement Legislation" (2022). All Papers. 349.https://digitalcommons.osgoode.yorku.ca/all_papers/349

Protecting British Columbia's Precarious Workers

The Government of Canada has frequently cited its support and adherence to a feminist approach to addressing unpaid and paid care work[4]. In this approach, they cite the International Labor Organisation (ILO) and reaffirm the "5 Rs" of care work:

> ***"There are five entry points for addressing care work in Canada-funded programming, anchored by Canada's commitment to gender equality and human rights:***
> - ***recognizing the value of unpaid and poorly paid care work***
> - ***reducing drudgery and hours spent on unpaid care work***
> - ***redistributing responsibility for care work more equitably, both within the household and outside it***
> - ***ensuring unpaid and paid care workers are represented and have a voice***
> - ***responding to the rights and needs of unpaid and paid care workers***
>
> ***This "5 Rs" approach (Recognize, Redistribute, Reduce, Represent, Respond) is directly informed by a series of "3/4/5 Rs" frameworks on care work, initially designed by Diane Elson (2008) and further elaborated by various organizations including Oxfam, ActionAid, the Institute for Development Studies and most recently the ILO."***

Furthermore, the Government of Canada specifically references the need to promote, establish and support ***"legislation, policies and programs that respond to the needs and rights of unpaid and paid care workers, including migrant care workers (for example, extension of minimum wages, regulation of paid care work and other labour laws and services that promote safe working conditions".***

Establishing a sectoral bargaining model for care workers in British Columbia is a comprehensive solution to a complex problem.

A sectoral bargaining framework would:

- Improve standards for all migrant care workers in the province
- Eliminate reliance on a individualized complaint-based model of enforcement and negotiation
- Provide a framework for enforcement and compliance
- Provide a central body for care worker education and support
- Centralize and standardize the burden of employer-side responsibilities

3 Government of Canada. "Canada's feminist approach to addressing unpaid and paid care work through international assistance" (n.d.) https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/fiap_care_work-paif_prestation_soins.aspx?lang=eng

Protecting British Columbia's Precarious Workers (continued)

An inclusive sectoral bargaining structure is essential, one that is rooted in principles that support fairness and equity, aligning with feminist, anti-racist, and working-class values. Such a model needs to feature clear, straightforward policies and processes, designed to be accessible not just to those in policymaking or legal professions but to all stakeholders, including care workers and their employers. This approach is about empowering workers and the families they support, ensuring they have the tools and the agency to effectively engage with and adapt the system to meet their real-world needs.

Importantly, we also advocate for the value of creating a framework that is responsive to the evolving dynamics of the workplace, supporting a balance between workers' rights and employers' needs. Implementing a sectoral bargaining model that is built on these principles, British Columbia can enhance standards for everyone involved, cultivating a labour environment in British Columbia that is both fair and sustainable, driving positive outcomes for care workers, their employers, and the broader community. This collaborative approach underlines our commitment to improving the labour landscape in a way that respects the dignity and welfare of every worker, while also considering the operational realities and challenges faced by employers.

Conclusion

The need for equitable labour rights and protections in British Columbia, especially for migrant care workers, has long been a focal point of advocacy groups such as CDWCR. Migrant care workers, integral to the fabric of our provincial care system, find themselves in one of the most vulnerable and precarious positions within our labour market. Despite their invaluable contributions, they face significant barriers to accessing fundamental labour rights and protections, including the essential right to engage in meaningful collective bargaining.

The sectoral bargaining model proposed herein offers a robust, comprehensive, yet remarkably straightforward solution to this complex issue. It aligns seamlessly with British Columbia's existing labour relations framework, presenting an innovative approach to ensuring that migrant care workers are instead recognized as crucial contributors to our society.

Moreover, the importance of care work cannot be overstated, nor can it be seen as a temporary need. As our population ages, the demand for care services in British Columbia, and indeed across Canada, is set to increase significantly[4]. The current strains on our care economy highlight a pressing need for sustainable solutions that can support not only our aging population[5] but also the workers who provide these essential services. The sectoral bargaining model addresses these challenges head-on, proposing a system that benefits all stakeholders involved.

The realization of this model spells a positive outcome for all involved in British Columbia. It offers a pathway to rectifying the imbalanced access to rights and protections for migrant care workers, thereby strengthening our care economy. By adopting a sectoral approach, we can ensure that our province remains a place where the dignity and welfare of every worker are upheld, and where the care needs of our community are met efficiently and compassionately.

The time to act is now. By embracing the sectoral bargaining model, British Columbia has the opportunity to lead by example, setting a precedent for the rest of Canada in how we value and support our care workers. It is a step toward a more equitable, sustainable future for our labour market and our society at large.

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4 Canadian Centre for Caregiving Excellence. (2022). Giving care: An approach to a better caregiving landscape in Canada. Retrieved from: https://canadiancaregiving.org/wp-content/uploads/2022/11/CCCE_Giving-Care.pdf

5 Statistics Canada. (2022). "In the midst of high job vacancies and historically low unemployment, Canada faces record retirements from an aging labour force: number of seniors aged 65 and older grows six times faster than children 0-14." Retrieved from: https://www150.statcan.gc.ca/n1/daily-quotidien/220427/dq220427a-eng.htm

Worker Solidarity Network
519-620 View Street
Lekwungen Terr.
Victoria, BC, V8W 1J7

March 22, 2024

About the Worker Solidarity Network

The Worker Solidarity Network (WSN) is a provincial non-profit dedicated to advocating for labor rights and empowering vulnerable workers in low-wage sectors, including retail, restaurant, hospitality, and the gig economy. Led by workers with diverse lived experiences, WSN utilizes these insights to guide our sectoral campaigns and address barriers for marginalized workers, with a focus on critical issues like access to unionization and accessing employment standards, through widely distributed "Know Your Rights" kits, we ensure that workers are aware of existing protections.

Submission Summary

In this submission, we call for increased access to unionization for low wage workers in private sectors within the Labour Relation Code and enable sectoral certification/broader based collective bargaining for low wage workers, including the application to small workplaces in historically non-unionized sectors. Workers in non unionized sectors often experience precarious employment due to the lack of job protection and inadequate standards. Further, the minimum standards for non unionized workers are often not enforced leading to mistreatment and doesn't include a living wage. This is why it's important that more workers have access to collective bargaining and union protections, reducing inequality amongst workers that traditionally wouldn't have access to unionization.

The Worker Solidarity Network supports the submissions of the BC Employment Standards Coalition, the BC Federation of labour and the Vancouver Committee for Domestic Workers and Caregiver Rights. In particular, we support the BC Employment Standards Coalition's call for new provisions in the Labour Relations Code to enable sectoral certification/broader based collective bargaining (BBB) for workers in the private sector, and that online platform workers be confirmed as specifically included in the definition of "employee" in the Code as they are now included in the Employment Standards Act. Further, we support the Vancouver Committee for Domestic Workers and Caregiver Rights recommendation to ensure caregiver's, predominantly a sector with precarious racialized workers without permanent status, have access to broader based bargaining. Lastly, we support the BC Federation of Labour's submission which includes the following recommendations:

Protecting Workers Rights by:

- Expanding successorship protection to all workplaces;
- Ensuring provincial workers are able to honour federal picket lines;
- Extending the freeze period until a first agreement is reached;
- Ensuring that remote or digital workers have the right to establish virtual picket lines, communicate about the strike with the public and that a virtual picket line has the same standing as any other picket line;
- Affirming that online platform workers are covered by the definition of employee in the Code and have the right to organize;
- Allowing secondary picketing at or near sites the struck employer is using to perform work, supply goods or furnish services that are substantially similar to those of the striking workers;
- Clarifying the definition of common employer to prohibit double breasting;
- Establishing a single-issue panel to examine the impact of artificial intelligence and automation on BC's workplaces; and
- Strengthening the language in section 54 to require a negotiated adjustment plan when an employer introduces a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees.

Improving Access to Collective Bargaining by:

- Establishing a single-issue panel to consult on implementing sectoral/broader-based bargaining to address to address BC's changing workplaces structures, high level of worker precarity and the barriers to unionization that continue to exist for too many workers;
- Promoting the successes of single step certification; and
- Providing access to employee lists where a union is able to demonstrate a threshold of 20% support of employees in the proposed unit.

Improving LRB processes by:

- Substantially increasing funding for the Board; and
- Improving timely access to LRB services and decisions.

Move forward on reconciliation with Indigenous peoples by:

- Acknowledging Labour's commitment to reconciliation and to fully participate in future processes to align the Labour Relations Code with the UN Declaration. Labour strongly believes that access to unionization and freedom of association is a tool for reconciliation and, from an intersectional perspective, to address the dignity of Indigenous workers.

We submit that these important and highly impactful priorities to address the growth of precarious employment must be included in the Labour Relation Code to achieve a fair and equitable future for all low wage workers in the province.

Kind regards,

Pamela Charron
Executive Director
The Worker Solidarity Network

SUBMISSION TO

THE LABOUR RELATIONS CODE REVIEW PANEL

PRESENTED BY

David J.A. Porteous EPC

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March 19, 2024

The Labour Relations Code Review Panel

Panel Members:

Sandra Banister, KC
Michael Fleming
Lindsie Thomson

Email: lrcreview@gov.bc.ca

Dear Panel Members:

Our company has over thirty-nine (39) years of experience working with both Employers and Unions where bargaining benefits is concerned.

Over the past fifteen years Working Enterprises Consulting & Benefits Services (WECBS) has offered various one day, two day, and week-long courses on group benefits to both Unions & Corporations.

I am writing to address three persistent issues that have been brought to our attention by course attendees over the past decade regarding the fair treatment of unions and their members before and during bargaining for benefits.

1. **Union access to benefits documents for bargaining.**

2. **Employers' unwillingness to cooperate and coordinate for 100% member paid benefits.**

3. **Loss of benefits due to Union local honouring a picket line during a legal strike or lockout.**

There are three reoccurring areas where course attendees feel they are not treated fairly before or during the bargaining of benefits:

1. **Union access to benefits documents for bargaining:**
    a) One of the primary challenges we encounter is the delay or refusal by Employers in providing unions with access to all necessary benefits documents essential for effective negotiations.
    b) Despite unions being entitled to this information to effectively represent their members, they are often not provided with information requested or it takes months, and some cases over a year, to obtain even partial documents.
    c) Delays in producing documents significantly impedes the bargaining process and undermines the union's ability to negotiate benefits effectively.
    d) The Employer has easy access to all the required information making for an unbalanced and unfair standing in bargaining.
    e) Lack of clear rules result in employers holding the misconception that they are not obligated to share benefits data during bargaining, further complicating the negotiation process.
    f) Employers often cite Privacy regulation rules as the reason not to share the requested information.
    g) Requested information is not member specific and therefore should be accessible to the union for bargaining purposes.
    h) Consequently, many unions are compelled to seek resolution through the Labour Relations Board (LRB).

2. **The unwillingness of Employers to cooperate with Unions/Locals, this occurs when Employers have "refused" to negotiate Long Term Disability coverage but the Union/Local is willing to have its members pay and join a Union Sponsored Disability program.**
    a. Employer refusal to support and negotiate a member paid Long Term Disability (LTD) plan leaves union members vulnerable in the event of illness or injury.
    b. Lack of a member paid LTD plan leaves workers with limited recourse, often reliant on government programs for support.
    c. Employers will not allow for a "member paid" Union sponsored LTD program even though the members support this option.
    d. Employers will not share the required information for the Union's plan administrator to properly manage the plan.
    e. Employer will not deduct and remit the required premiums to the Union's LTD Administrator.
    f. The Employer, in most instances, already collects & remits premiums for other staff benefits and therefore have the internal systems already in place.

3. **Benefits coverage denied by employer where a local(s) is honouring a picket line during a legal strike or lockout:**
    a) We have witnessed egregious exploitation of Union benefits plans by Employers during strikes or lockouts, including instructing insurance carriers not to provide information to the Union regarding coverage denials. Such actions jeopardize the well-being of workers and their families.
    b) Lack of access to benefits during a labour dispute can have severe consequences, potentially leaving workers and their families without essential coverage.
    c) Disruption in benefits coverage during a labour dispute may lead to the reinstatement of pre-existing conditions clauses, further complicating access to coverage post-dispute.
    d) Employees who are honouring a legal strike or picket line are having their benefits cancelled by the Employer.
    e) Having no access to coverage during a labour dispute could greatly jeopardize an employee's health, particularly when they have a medical condition(s).

Summary:
Unless benefits are controlled by a Union or within a Trusteed Benefits Program, Insurance Companies, Administrative Services Only (ASO) providers are hired by Employers.

As mentioned above, Employer actions create significant challenges for maintaining and providing essential benefits to employees. Unions require a clear avenue to safeguard crucial benefit coverages, ensuring members' access to necessary medications, and avoid a break in coverages that could create pre-existing conditions exclusions after a labour dispute.

We would like to discuss these issues further to explore potential solutions and we would be more than willing to engage in dialogue.

Sincerely,

David J.A. Porteous EPC
Michael J. Porteous MTMS
USW 1-1937/UFCW 1518

From:
To: LRC Review LBR:EX
Cc: Heyman.MLA, George LASS:EX
Subject: BC Labour Code Review Feedback
Date: February 28, 2024 5:48:58 PM

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cc: MLA George Heyman MLA for Vancouver-Fairview

To the Labour Code Review Panel,

Dear Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expands the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to "providing stable labour relations and supporting the exercise of collective bargaining rights," as stated in Minister Bains' 2022 Mandate Letter.

The entertainment industry needs this protection as contract flipping has happened to us in the past and threatens us still as it is being used increasingly throughout North America as a means of preventing or removing union representation.

Most of us depend on work on a casual basis and so are part of the vulnerable "gig economy," although we mostly work as employees, not contractors. Many of us in the industry, working at and supplying some very large venues, do not have the benefit of union jurisdiction. Others, working at unionized venues know that they might find their jobs contracted out to a non-union supplier.

Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.

Sincerely,

Aidan Rantoul

From:
To: LRC Review LBR:EX
Subject: Successor rights
Date: February 27, 2024 11:51:37 AM

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to “providing stable labour relations and supporting the exercise of collective bargaining rights,” as stated in Minister Bains’ 2022 Mandate Letter.
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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.
Allen Sherst

From:
To: LRC Review LBR:EX
Cc: Greene.MLA, Kelly LASS:EX; Bains.MLA, Harry LASS:EX
Subject: 2024 labour code update - successorship rights
Date: February 27, 2024 9:11:22 AM

Labour Relations Code Panelists:

I am a member of both The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118, *and* Canadian Union of Public Employees (CUPE) Local 2950. I work as a stagehand and designer for multiple employers, at multiple venues, across Vancouver. The unions represent workers at UBC, across the Lower Mainland, and British Columbia.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to "providing stable labour relations and supporting the exercise of collective bargaining rights," as stated in Minister Bains' 2022 Mandate Letter.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

I urge you to recommend the expansion of successor rights to help protect vulnerable workers in the Entertainment Industry.

Thank you for your work.

Andrew M. Riter

Frm:
To:
Cc:
Subject:
Date:

For your consideration:

Sorry to bother you Minister Dix, I'm sure you're very busy with Health matters, but you're also my MLA, and a strong supporter of worker rights.

The IATSE has brought this to my attention as it has been a way for employers to skirt organization in the past. I have concerns this could result in inexperienced workers, lacking protection of representation, acting (potentially unknowingly) unsafely, putting our heavily scrutinized industry at risk. This is especially concerning in light of Live Nation's most recent announcement of record profits whilst thousands of smaller, independent venues suffer or cease to exist. This constant, monopolistic, grab for market share allows them to place increasing pressure on venues and production providers causing them to look for cheaper, less experienced, labour. This is a race to the bottom that could end in tragic headlines. The work we do is safe because we are trained, experienced, careful, and have the support of each other when addressing safety concerns.

Form letter below, should you have already received many.

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to “providing stable labour relations and supporting the exercise of collective bargaining rights,” as stated in Minister Bains’ 2022 Mandate Letter.
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Workers should not fear loss of their jobs, or reduced wages and benefits through contract

flipping, especially when considering organizing toward new union certification.

Thank you for your work.

--
Anonymous active member with 20+ years of experience in the BC live entertainment industry. With concerns for the safety of our new colleagues.

March 22, 2024

To The Section 3 Committee,

I am an employee at the Labour Relations Board. I wanted to let you know about the staffing crisis that we have at the Board. As you know, in the Code review dated August 31, 2018, the panel said under 'Resources for the Labour Relations Board' that the Board's funding has been dramatically reduced which '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.'

The Panel's Recommendation No. 29 was that the Board's funding must be increased to enable it to meet its duties under the Code'.

While the Board did get a new computer system (drs), it is something that was done halfway. Unfortunately, the Board staff who use drs, while consulted at the beginning of the project, were not consulted when the system was being built or at the finishing stages. In many ways, it is not user friendly and can take longer to accomplish a task in the new system than the old cms system. We cannot do basic things, like generate a certification document. If a certification document is requested (which as you know happens a lot) the information to produce a certification is now gathered by staff, going into different areas of drs to pick the most current information and then gets cut and pasted into a word document. The Board staff also cannot produce letters to send to the parties from the drs system. Again, information is cut and pasted into a word document to be sent to the parties. There is no doubt that we needed a new computer system, but what we ended up with was not what we were told we would get. I understand we did not get certain things because we did not have money for everything, but to not have a program that can generate a certification document seems crazy. I understand other parts of drs are an improvement and we were able to go paperless as everything can be uploaded into drs, but in many cases it has not saved time and is not easier to use for the staff that input information into it on a daily basis.

Even though there was a recommendation in the last Code review that the Board's funding must be increased to enable it to meet its duties under the Code, this has not happened. Not only do we need 'special investigation officers and mediators' but most departments at the Board need more staff. With the addition of single step certification, the stress level has gone through the roof. In the Registry department the changes that have been made to the workflow because of single step certification has added so much more stress, not only for the Case Administrators, but for the Registry Assistants who are the lowest paid employees at the Board. Management wants the expedited notices to go out the same day that they are received, which causes much stress when applications come in late in the day, for all involved. These applications are being processed 'as is' and any mistakes or problems with the file are

then sorted out the next day which can cause extra work for the Case Administrators and Registry Assistants.

I cannot stress enough that the staffing levels at the Board are woefully inadequate. In my opinion, we need to add a floater position in the Registry, an Officer, a Special Investigating Officer, an Executive Assistant, a Vice-Chair, and a Mediator.

The number of applications we receive has gone up greatly in the past years. On expedited applications (certifications / decertifications, etc.) we are statutorily required, if a vote is ordered, to have it proceed within five business days. The hearing on these expedited applications generally happens on the third business day after receiving the application. The Officers now have one to one and ½ days to do their investigation and get the Officer's report and documents pertaining to the report to the parties and the Vice-Chair prior to the hearing. I know of no other labour board in the country that has timelines like this. We are getting more applications coming in and yet our staffing levels have not changed. As you can imagine, the stress level in the Registry department is high, and morale is at an all-time low. The workload of course flows to the Adjudication department with the Vice-Chairs barely having time to take their writing days, as they are constantly dealing with expedited certification / decertification applications, unfair labour practice complaints pertaining to the expedited applications (and of course their other files which may not be considered expedited, but absolutely should be dealt with in a timely manner).

We need more staff at the Board as soon as possible. I know the Section 3 Committee knows this and has said this in their previous Report. Even if your recommendations in this Report result in no further changes to our processes that would require more staff, I implore you to continue to stress that the Board is so very understaffed. Our staff members go above and beyond, and it is very hard to see the Board go from a place where people felt they were being listened to, their opinions mattered even when others had different opinions, a place people were proud to work at, where there was collaboration, to a place where people barely leave their desks because they are stressed and feel as if they can never get ahead of the workload.

Thank you for taking the time to read this.

From:
To: LRC Review LBR:EX
Cc:
Subject: LRB standard of review of reasonableness and not correctness is a human rights violation
Date: March 21, 2024 7:26:09 PM
Attachments: Letter to J. Chalke.docx
Fair administrative tribunal.docx
Hansard on section 13 19921126 (2).pdf

LRB standard of review of reasonableness is a barrier for any unionized employee to access their ESA minimums and statutory rights

Please find the attached. I have petitioned the office of the BC Ombudsman about this flaw in our justice system and feel that the information I have already presented is appropriate for this review.

Answer this question in writing and email me:

Does the individual unionized worker have the same access to their ESA part 6 entitlements that the non-unionized worker is allowed and that is *access to the investigation, interpretation and enforcement of those individual rights*?

The answer is no because the individual's Part 6 entitlements are under the absolute control of the workplace union business representation and any 'decision' of that person's individual statutory entitlements cannot be reviewed for correctness because it is made under the cloak of the grievance process.

Prove me wrong.

Cheryl Sandvoss

As per Chris Budgell - legislation needs to change as this 'revision' created the situation where human rights violation exist:

HANSARD

THURSDAY, NOVEMBER 26, 1992
Afternoon Sitting

Volume 6, Number 24
1992 Legislative Session: 1st Session, 35th Parliament

Jay Chalke, November 9, 2020

December 15, 2020

I have corresponded with the office of the Ombudsperson initially in February 2019 and most recently, in October 2020 (Kate Morrison). After two years of self representation, I am now left looking back on the process and service that I received from your office. I find it wanting in a most serious way: what I received from your office conflicts with your mandated statement of fairness, investigation and upholding of individual rights.

In 2017, I was recognized by the Federal Government under the EI Commission for Compassionate Care. I applied for and received the EI monetary benefits for absence from insurable earnings when I provided care for my husband during his heart attack. I have a signed Compassionate Care Medical Certificate.

Since 2017, I am unable to be recognized in my own province for the right to absence during the same time. I was disciplined at my unionized workplace with a 10 day suspension for being absent on the days that I received CCB EI payments.

The Collective Agreement allows for such action contrary to the ESA Part 4. The Teamsters Union Local #31 (TLU#31) signed the CA that contains this violation of the ESA.

The union settled the grievance 11 days before arbitration. In the settlement, the TLU#31 union ignored my individual right to absence and allowed discipline to be imposed during a statutory protected leave. In this settlement, the union also allowed the employer to exceed the terms of the CA and apply 21 months of progressive discipline being 9 months in excess of the Sunset Clause.

Due to the wording of the Labour Relations Code in respect to s.12 complaints, I cannot achieve justice in the administrative law tribunal. The LRB standard of review is 'reasonableness'. To achieve a standard of review of correctness, I and any other union employee, are forced to petition the BC Supreme Court for judicial review of the LRB decision.

Your office extinguished my ability to achieve that judicial review.

1 – s. 3(7) of the ESA mandates that the union has complete control of the individual statutory entitlements of Part 6 'Leaves and jury duty' through the grievance process.

2 – s. 3(7) of the ESA mandates that a violation of ESA Part 4 is restricted to the grievance process for resolution.

3 – The Collective Agreement (effective to 2021) of Prince George Transit (PGT) and the Teamsters Local #31 (TLU#31) violates Part 4 with 'Employees requesting an unpaid leave of absence for compassionate reasons shall be given time off if spare drivers are available.'

4. – The sole bargaining representative asked for and received my completed Compassionate Care Medical Certificate. Five months later, the TLU#31 accepted a settlement that allowed discipline for absence taken when Compassionate Care Benefits WERE PAID for the same days.

5. – the BC Labour Relations Board does not investigate a S.12 complaint and restricts its review to that of 'reasonableness'. There is no review in a s.12 complaint for the standard of correctness.

6. – I specifically stated in the LRB s. 12 forms:

' I request a review by the ESA Branch to ascertain the responsibility of the employer to inform the employee of CCB.

I would also request a confirmation from the ESA Branch that one the CCB benefits are claimed that all the rights are in place for the employee including the right to absence and the right to privacy.'

In response to my submissions, the LRB adjudicator opinionated that my complaint concerned the four month delay in receiving monetary benefits as the pivotal reasoning for submitting a s.12 complaint.

The LRB adjudicator excluded my express reference to the statutory right which the TLU#31 failed to challenge the 10 day suspension on that statutory right in a grievance and subsequent imposed settlement as being the basis of the s.12 complaint.

The LRB adjudicator opinionated again, without investigation, that Compassionate Care Leave was not relevant to the grievance of 10 days of suspension for absence during an entitled leave.

Sandvoss v Prince George Transit Ltd., 2018 CanLII 106276 (BC LRB), <http://canlii.ca/t/hw14p>

44 The Code requires that, in certain circumstances, trade unions investigate and make themselves aware of relevant information. I find that, even if I assume the Complainant's entitlement to compassionate care leave was relevant to the Suspension Grievance, the Union made itself aware of her entitlement to that leave and took steps to gather necessary facts.

49 The Complainant's objection under the heading "Reasoned Decision" is that: compassionate care benefits "…were confirmed beginning Sept 5, 2017". I infer that her concern is that there was a significant delay between that date of her absence and the date upon which her compassionate care benefits were approved.

The Complainant then lists a number of factors which she says "entirely" caused "[t]he delay in the application".

7. – My only opportunity to obtain a review for the standard of correctness is to petition for a BCSC judicial review of the LRB.

8. – Your office accepted my case and then took over six months to reach a conclusion. They did not advise, at any time, that I file for a judicial review. Your office did not consider the statutory provisions of the ESA even though I expressed the question of a government agency's process that ignores a statute.

9. – To obtain my individual statutory entitlement to leave under the Compassionate Care Leave of the EI Commission is to utilize the BC Human Rights Tribunal. As of today, this will be a two year process which is currently at the dismissal application stage. To date, it is taking over three years to attain the right to absence that is available to a non-unionized employee who could access the ESA Branch and Tribunal for a decision based on the interpretation and enforcement of the Act.

There is an absence of justice in the BC Labour Relations Board decisions concerning the standard of correctness as it relates to the provisions of the ESA. It is grossly unfair that I have to pay a fee to the BC Supreme Court to access a level of justice that is available to a non-unionized employee who, without cost, freely engages the services of the Employment Standards Branch for interpretation and enforcement of the Employment Standards Act.

From your article in the Times Columnist, your statements that jump out the most are:

But we also want governments to work within shared Canadian values: respect for the rule of law, freedom of expression, equitable treatment, the protection of the vulnerable and governance that's transparent and accountable.

Together, these officers stand up for enduring principles that matter to all Canadians, arguably even more during a crisis: being treated fairly, reasonably and justly.

*Decades ago, the Supreme Court of Canada said the role of the ombudsman was to "**bring the lamp of scrutiny to otherwise dark places**, even over the resistance of those who would draw the blinds."*

https://www.timescolonist.com/opinion/op-ed/comment-oversight-in-a-pandemic-finding-the-sweet-spot-1.24132449

The lamp that I am requesting you bring is to the dark places of the Labour Relations Board and the BC Employment Standards Act. There is an absence of justice concerning administrative law within the judicial process known as a Section 12 duty of fair representation complaint against the union. Specifically, the 2002 legislation s. 3(6) and s. 3(7) 'Leave and jury duty' Part 6 that gave the **individual statutory entitlements** of a person to the sole representation of the union. I find this offensive – it is as if the unionized person is merely chattel that can be bought and sold to a business. It is truly offensive because the equity that is expressed in the Charter of Rights and Freedoms has taken a back seat to the political power plays of the BC government over the last four decades.

I am requesting the BC Ombudsperson repeal the Employment Standards Act Bill 6 (2018) ESA 3(7) – Part 6 (leaves and jury duty) as it impairs the Charter Rights 15 (1) – Equality before and under law and equal protection and benefit of law.

The government of BC did not appreciate that the Labour Relations grievance process would cause the individual's statutory entitlements to be denied, settled or violated by the sole representation of the union's sole representation without recourse through the BC Employment Standards Tribunal.

The government of BC did not appreciate that the Section 12 'duty of fair representation' concerning the individual's statutory entitlements would be eliminated due to the LRB's reasonableness standard of review contradicting the court's correctness standard of review necessary for the interpretation and application of a statute.

The government of BC did not appreciate that the unionized individual would be forced to pay in BC Supreme Court to obtain a standard of review for correctness to obtain that individual's statutory entitlement under Part 6 – leaves and jury duty.

The ESA 3(7) Part 6 is unconstitutional, cannot be justified and fails the Oakes Test:

RATIO:

- *4 Step Oakes Test*
1. *Pressing and Substantial Objective*
    - *Is it a pressing and substantial objective in a free and democratic society, enough to warrant overriding a constitutional right?*
2. *Rational Connection*
    - *The measures adopted must be carefully designed to achieve the objective in question*
        - *Must not be arbitrary, unfair, or irrationally based*
3. *Minimal Impairment of the Right*
    - *Even if rationally connected to the objective, the means should impair the right as little as possible*
    - *Fails if there is another reasonable path for the government that would impair the right less*

- *Test usually fails at this stage*

4. *Proportionality/Cost-Benefit Analysis*
   - *Must be a balancing of proportionality between the effects of the measures that are responsible for breaching the Charter and the objective that has been showed to be justified*

British Columbia Teachers' Federation (Chudnosky) v. British Columbia, 2011 BCSC 469 (CanLII), <http://canlii.ca/t/fl1b4> (347- 353)

The implication of ESA 3(7) is first evident shortly after the 2002 changes. This contravention of the ESA took 13 years for completion:

United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, Local 2009 v. Auyeung, 2011 BCCA 527 (CanLII), <http://canlii.ca/t/fpdv1>

[77] The reconsideration panel accepted the submission of the respondents that the original panel "simply deferred to another tribunal's interpretation of its 'home' statute" (para. 11). The reconsideration panel continued at para. 12:

… we find that the [appellant] has not established any reviewable error in the Original Decision on this ground. Simply put, the Board's task is to assess the scope of application of Section 12 in light of the reality of the situation. That reality includes the Employment Standards authorities' interpretation of their home statute.

That approach is consonant with the recent decision of the Court in British Columbia (Workers' Compensation Board) v. Figliola, 2011 SCC 52, 421 N.R. 338 wherein the Court, while addressing the matter from a different perspective, recognized the desirability of administrative tribunals' deferring to one anothers' statutory interpretations when these fall within their shared competence.

[80] I find it difficult to understand why the Delegate's interpretation of the ESA is significant. Rightly or wrongly, a decision was made that the respondents' rights to severance under the ESA had to be pursued in a grievance under the collective agreement. A grievance was pursued, the result of which was the arbitral tribunal's finding that the appellant had contracted away the rights of the respondents. This finding is what led to the allegation that the appellant had violated its duty of fair representation and the consequent application under s. 12. That application was based on the decision of the arbitral tribunal, not on the Delegate's interpretation of the ESA.

Unionized individuals are being forced to access their employment standards minimums by utilizing the BC Human Rights Tribunal

1. Beaton v. Tolko Industries, 2008 BCHRT 229 (CanLII),
<http://canlii.ca/t/1xttq>

26] Tolko says that the issue in this case is not whether there is a breach of the *ESA* or the collective agreement in the sense of interpreting the collective agreement, which is within the exclusive jurisdiction of an arbitrator. The question is whether Tolko, acting under the provisions of the collective agreement with respect to vacation pay, discriminated against Mr. Beaton when he took parental leave in 2005. Tolko said that it would appear the Union agreed with its interpretation of the collective agreement because it did not pursue Mr. Beaton's grievance.

[59] I accept that Mr. Beaton was frustrated with the denial of his grievance and that he then had to pursue this matter through the *Code*. Mr. Beaton was required to pursue this matter in another forum, redoubling his efforts to pursue what he believed was his right; a right that Tolko continued to deny. As a result, I find that Mr. Beaton should be compensated for the loss of dignity, feelings and self-respect in having to pursue this matter. Tolko Industries Ltd. (Armstrong Division) is therefore ordered to pay Richard Beaton an amount of $3,500 for loss of dignity, feelings and self-respect. Post-judgment interest from the date of the hearing is awarded on that amount, calculated at the bankers' prime rate as published by the British Columbia Supreme Court Registry.

2. Haggerty v. KSCL and others, 2008 BCHRT 172 (CanLII),
<http://canlii.ca/t/1wzt4>

[17] In my view, the circumstances of this case differ significantly from those in *Health Sciences*. At issue in that case was an allegation that the employer had failed to accommodate an employee on the basis of her family status. In contrast, what is at issue in this complaint is an allegation that provisions of the collective agreement and call-in policies had an adverse effect on Ms. Haggerty because of her family status.

[29] Whatever the circumstances of the October 2005 call-in provisions, it appears that casual employees may still be adversely affected by the October 2006 call-in language as Family Leave Days are only available to casual employees with 12 months consecutive employment on a seniority basis. Furthermore, it is the collective agreement which states that Family Leave Days are not available to casual employees. In my opinion, there is reliable evidence on which the Tribunal could make a finding of discrimination.

[35] The application of the Respondents to dismiss the complaint is denied. Ms. Haggerty's application to add the Union is granted.

BCTF has won their members' Employment Standards Act minimums but only at the BC Court of Appeal to access the standard of review for correctness:

B.C. Teachers' Federation v. B.C. Public School Employers' Assoc., 2015 BCSC 1081 (CanLII), <http://canlii.ca/t/gjp6v

[44] The Court of Appeal's decision being neutral on the point, the next issue that arises is whether it was patently unreasonable for the review panel to conclude that the 30-day grievance limit applied. The thrust of the union's position is that the employees had vested rights under s. 56(3) that could not be affected by the grievance procedure. The union says that otherwise they would have a right without a remedy.

British Columbia Teachers' Federation v. British Columbia Public School Employers' Association (No. 2), 2016 BCCA 273 (CanLII), <http://canlii.ca/t/gs7dt>

[47] Thus, under s. 58(2) of the *ATA*, the court must not interfere with a decision by the Board on a question of law unless the decision is patently unreasonable. However, the Union argues that an interpretation by the Board of substantive rights under the *ESA* must be reviewed on a standard of correctness. It cites this Court's First Decision (at para. 29) as authority for its position.

A unionized employee has to access the BC Court of appeal against both the employer and the union to uphold his statutory rights:

Casavant v. British Columbia (Labour Relations Board), 2020 BCCA 159 (CanLII), <http://canlii.ca/t/j81d4>

[47] An appeal from that decision was allowed: *Carpenter No. 2*. Anderson J.A. writing again in concurring reasons began by "emphasizing forcefully" at para. 20 certain central matters of fact and law which I quote in part:

(1) The conduct of the [employers] was unlawful from the outset.

(2) The purported dismissal was a nullity.

(3) The arbitration process was null and void from the outset and, if the arbitration had proceeded, the arbitrator must necessarily, as a matter of law, have declined jurisdiction on the ground that the only method of proceeding against Carpenter was pursuant to the regulations.

(4) Both the respondents and Carpenter proceeded under a mistake of law as follows:

> (a) The respondents mistakenly believed that they could dismiss Carpenter on the basis of "fundamental breach" by Carpenter of his contract of employment.
>
> (b) The respondents mistakenly believed that the regulations were not applicable at all, either to the dismissal or to the arbitration process.
>
> (c) Carpenter mistakenly believed that, while he was entitled to the procedural and substantive rights afforded to him by the regulations, the matter was one for disposition, in accordance with the grievance and arbitration procedure outlined in the collective agreement.

[Emphasis added.]

[53] That brings me squarely to the question of whether the jurisdictional issue should be remitted to the Board. Although that is the general rule, declining to remit a matter may be appropriate where it becomes evident "that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose": *Vavilov* at para. 142. In my view, this is such a case.

[54] The Collective Agreement does not form part of the record, so neither the Ministry nor the Union particularized their argument that the issues raised by Mr. Casavant's dismissal were governed by its terms. Mr. Casavant agrees that some aspects of the employment of Special Provincial Constables are governed by the Collective Agreement, such as hours of work, wages, and general expectations. However, he submits that all of the conduct put in issue by the Ministry related to the performance of constabulary duties. I agree with that assessment.

ESA 3 (7) Part 6 and the union grievance process and the LRB standard of review of reasonableness is a barrier for any unionized employee to access their ESA minimums and statutory rights:

- Collective agreements exist that violate Part 4 of the ESA with no remedy other than the grievance process for resolution. That process is controlled by the union which has the authority to dismiss said grievance.
- The LRB can rule on the standard of reasonableness and dismiss the duty of fair representation charge even while the union is wrong in their decision; as long as the union has fulfilled it's obligations to the procedures it can arrive at the wrong conclusion without reprisal.
- There is no adequate alternate remedy for an individual unionized employee to access their individual statutory entitlements. The unionized employee is not equal under the law of ESA Part 6 due to the wording of S. 3(7) giving their individual entitlements to the sole representation of the union.

Injustice anywhere is a threat to justice everywhere.

Martin Luther King, Jr.

After two years of slogging through readings of law cases that a Class 1 driver is not expected to encounter as a requirement for driving a BC Transit bus…….I remain committed to continuing my efforts with a goal of publicly presenting my situation.

I respectfully request a written reply from you and your office.

Cheryl Sandvoss

December 15, 2020

Office of the Ombudsperson

Kate Morrison
Ombudsperson Officer

There is an unacceptable absence of administrative JUSTICE within the BC Labour Relations Board

"In essential respects, however, the quality of justice in the administrative justice system must measure up to the quality of justice in the judicial system. The core elements of the rule of law must prevail in both."

Unjust by design: Canada's administrative justice system Ellis, S. Ronald ISBN 978-0-7748-2477-4 UBC Press page 147

Central issue: I received Employment Insurance monies under the Compassionate Care Leave benefits and at the same time, I was disciplined with a 10 day suspension for being absent on those same days.

Why – because I was forced to have representation of my individual statutory entitlements by the Teamsters Local #31 Union (TLU#31) through the grievance process and forced to take the settlement that the union accepted. In addition to this, the BC Labour Relations Board has a policy bias against s.12 self represented individuals that denied me the standard of correctness review when my statutory rights were paramount.

I am disappointed in the response that your office gave regarding my filed complaint in 2019. The Office of the Ombudsperson took over six months to provide a written reply to my issues regarding the unfair process of the BC Labour Relations Board s.12 complaint process. (1) I clearly stated in my correspondence that the issue was the fair interpretation and enforcement of a statute.

Due to this excessive response time, my ability to seek judicial review of the LRB decision was extinguished. I petitioned for a time extension which was denied. Please note that at this time extension hearing, both the TLU#31 lawyer and the Pacific Western Transportation lawyer were present alongside the LRB lawyer for a 10 minute hearing.

Please review your office's correspondence dated June 21, 2019 by Megan Stewart. Page 3 with the heading of Contractual vs. Statutory Rights. That is the issue that requires the focus of your review – Statutory Rights.

"A difference of opinion about the evidence used to make that determination is not sufficient to make the process unfair.'

A general law question was clearly identified and yet the LRB adjudicator, operating outside of his jurisdiction, opinionated that a Employment Standard Act was not relevant. Opinion is not the standard of correctness.

The administrative process of the LRB does not demand a **standard of correctness** which is required for the interpretation and application of the BC Employment Standards. THAT is unfair process for the unionized employee that is forced to have representation by the business interests of the union.

British Columbia Teachers' Federation v., 2013 BCCA 179 (CanLII), <http://canlii.ca/t/fx3vg>,

28] In Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals, 2011 SCC 59, [2011] 3 S.C.R. 616, the Supreme Court of Canada summarized the circumstances in which the standards of correctness and reasonableness are to be applied subsequent to its seminal decision on standards of review (Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190):

[35] An administrative tribunal's decision will be reviewable for correctness if it raises a constitutional issue, a question of "general law 'that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise'", or a "true question of jurisdiction or vires"....

[36] The standard of reasonableness, on the other hand, normally prevails where the tribunal's decision raises issues of fact, discretion or policy; involves inextricably intertwined legal and factual issues; or relates to the interpretation of the tribunal's enabling (or "home") statute or "statutes closely connected to its function, with which it will have particular familiarity" ...

British Columbia Teachers' Federation v., 2013 BCCA 179 (CanLII), <http://canlii.ca/t/fx3vg>,

*[29] As I concluded in dealing with the previous issue, the interpretation of s. 56(3) of the ESA is a question of **general law and, therefore, the standard of review is correctness**. This was the standard applied by this Court in the Health Employers decision with respect to the interpretation of s. 21 of the ESA and in British Columbia Teachers' Federation v. Port Alberni School District No. 70, 2011 BCCA 148, 17 B.C.L.R. (5th) 179, with respect to the interpretation given by an arbitrator to s. 76.1 of the School Act, R.S.B.C. 1996, c. 412.*

[30] I am not persuaded by the Employer's submission that the effect of ss. 3(6) and 3(7) of the ESA make the ESA the home statute of labour arbitrators. Those sections simply provide that the enforcement provisions of the ESA do not apply to certain sections of

the ESA (including Part 6) in respect of employees covered by collective agreements, and that disputes with respect to those sections are to be resolved through the grievance procedures in those collective agreements. Section 56(3) applies to non-unionized employees as well as employees covered by collective agreements, and arbitrators appointed to deal with grievances under collective agreements do not necessarily have any special expertise in interpreting such provisions of general application.

This is not a request for advocation for my situation alone.

This is a request for the BC Ombudsperson Office to review, for all BC unionized employees, the LRB process that fails to fairly apply the standard of correctness regarding interpretation of the Employment Standards Act within the provisions of the Labour Relations Code. Fairness means that the Act is interpreted and applied correctly in the LRB process eliminating the need for the unionized worker to petition the BC Supreme Court to review the LRB decision on the standard of correctness.

This situation recently unfolded, with Bryce Casavant. As an indicator of the power struggle that exists between the Courts, the administrative tribunals an the parties involved, the union has entered the fray claiming that the jurisdiction remain with the administrative tribunal.

https://www.timescolonist.com/news/local/union-challenges-court-win-by-island-conservation-officer-fired-for-saving-bear-cubs-1.24206526

'In its application, BCGEU counsel argue that the Court of Appeal decision creates confusion for its members with special provincial constable status facing discipline, replacing the robust grievance and arbitration mechanism under their collective agreement "with a skeletal process" in regulations under the Police Act.

"The decision is inconsistent with decades of jurisprudence in which arbitrators [at the B.C. Labour Relations Board] have taken jurisdiction over the discipline and discharge of employees with special provincial constable status," the application reads.

Casavant said he argued from the outset that arbitration under the BCGEU collective agreement was the wrong venue to discipline him for matters that fell under his duties as a special constable.'

Casavant v. British Columbia (Labour Relations Board), 2020 BCCA 159 (CanLII), <http://canlii.ca/t/j81d4>

Since November 2018 I have been on a rollercoaster ride of administrative tribunals and their interpretation of my common law situation.

The Labour Relations Board for the initial s.12 complaint and then the reconsideration November-December 2018.

The BC Ombudsperson Office from February 3 – July 3, 2019.

The BC Supreme Court for a time extension in September 2019.

The BCHRT from November 2018 to present - #18672

I have contacted BC Employment Standards to be denied access due to the union representation.

I have contacted my local MLA only to be told that there is nothing they can do.

I would like this rollercoaster ride to stop. I would like to enjoy the same rights that are available to a non-unionized employee under 52.1 of the BC ESA. I want my individual statutory entitlement to absence for Compassionate Care recognized and upheld in the unionized workplace.

My goal of bringing this to your attention is to prevent this situation from happening again to another unionized worker that is forced to have their individual statutory entitlements held, manipulated and denied by the interests of a business…….which is the union that represents that workplace.

1. **The Charter of Rights and Freedoms s. 15 –**

'*Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law….*'.

2. **The BC ESA 3(7) forces the individual unionized member to have the union represent that person's individual statutory entitlements through the grievance process. There is no opportunity for the unionized member to access the ESA Branch and tribunal.**

3. **The Employment Insurance Act is a federal Act. The scheme of the legislation is remedial and is to be read with the broadest application.**

4. **The interpretation of 52(1) BC ESA is a question of general law and the review is of correctness.**

British Columbia Teachers' Federation v., 2013 BCCA 179 (CanLII), <http://canlii.ca/t/fx3vg> (29-30)

5. **The privative clause of the BC LRB mandates that *patently unreasonable* is the standard of review.**

United Association of Journeymen, Local 170 v. Allied Hydro Council, 2016 BCSC 435 (CanLII), <http://canlii.ca/t/gnpb8>

[14] As a result of the privative clause in s. 138 of the Labour Relations Code and ss. 58(1) and (2)(a) of the Administrative Tribunals Act, if this matter was one exclusively within the jurisdiction of the Board, then the standard of review would be patently unreasonable: British Columbia Ferry and Marine Workers' Union v. British Columbia Ferry Services Inc., 2013 BCCA 497 at para. 47.

[15] The rationale for providing a specialized tribunal with great deference is set out in Prince Rupert Grain Ltd. v. International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514, 1996 CanLII 210 (SCC), [1996] 2 S.C.R. 432 at para. 24:

> *It has often been very properly recognized that labour relations boards exemplify a highly specialized type of administrative tribunal. Their members are experts in administrating comprehensive labour statutes which regulate the difficult and often volatile field of labour relations. Through their constant work in this sensitive area, labour boards develop the special experience, skill and understanding needed to resolve the complex problems of labour relations. There were very sound reasons for the establishment of labour boards and the protection of their decisions by broad privative clauses. Parliament and provincial legislatures have clearly indicated that decisions of these boards on matters within their jurisdiction should be final and binding. The courts could all too easily usurp the role of these boards by characterizing the empowering legislation according them authority as jurisdiction limiting provisions which would require their decisions to be correct in the opinion of the court. Quite simply, courts should exercise deferential caution in their assessment of the jurisdiction of labour boards and be slow to find an absence or excess of jurisdiction.*

Where is the **standard of *correctness*** for constitutional issues within the s.12 process of the LRB? The only access to this standard of correctness is to appeal to the BC Supreme Court.

Administrative law is therefore…..flawed: a constitutional issue requiring the standard of review of correctness has been supplanted by the s. 12 administrative process under the Labour Relations Code. This is in direct conflict with numerous BCCA reviews of administrative tribunals' decisions where the standard applied by the Court WAS the interpretation of the ESA.

British Columbia Teachers' Federation v., 2013 BCCA 179 (CanLII), <http://canlii.ca/t/fx3vg>,

28] In Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals, 2011 SCC 59, [2011] 3 S.C.R. 616, the Supreme Court of Canada summarized the circumstances in which the standards of correctness and reasonableness are to be applied subsequent to its seminal decision on standards of review (Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190):

[35] An administrative tribunal's decision will be reviewable for correctness if it raises a constitutional issue, a question of "general law 'that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise'", or a "true question of jurisdiction or vires"....

6. The Labour Relations Board is policy biased against s.12 self represented complainants

Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000, 2003 CanLII 62912 (BC LRB), <http://canlii.ca/t/20wmc>

'11 We believe that the difficulty in understanding the legal tests in Rayonier may be contributing in part to the consistently large number of applications filed every year. The Board continues to receive about 200 Section 12 complaints per year, despite their low success rate (less than five percent are successful). Complainants appear not to be deterred by the strict legal tests or low success rates. Moreover, Section 13, to which we now turn, does not seem to have achieved its intended purpose.

15 The guiding principles for all Code provisions, including Sections 12 and 13, are set out in Section 2 of the Code. Section 2 was recently amended in three ways. Section 2 is now a "duties" provision rather than a "purposes" provision as it was formerly. The Board is now required to exercise its functions according to the "duties" set out in Section 2.

17 *Section 2 of the Code as a whole states:*

> *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*

(a) **recognizes the rights and obligations of employees**, employers and trade unions under this Code,

19 Subsection 2(a) recognizes the rights and obligations of the three immediate parties to labour relations: the employees, employers, and trade unions. Subsection 2(b) then identifies the goal of ensuring that the labour relations system fosters or encourages the employment of workers in economically viable businesses. '

25 *Every year the Board receives a far greater number of Section 12 complaints than are justified on the facts. This has resulted in excessive demands being placed on the resources of unions and the labour relations system as a whole, including the resources of the Board. While in part this may be due to an increased level of sophistication amongst employees in the workforce in general, in our view it may also flow from a fundamental misconception regarding the nature of the rights and obligations arising under Section 12.*

30 *For example, although the Board has explained that it has no jurisdiction to overturn a union's decision simply because an employee thinks it was wrong, the Board receives a large number of Section 12 complaints which essentially ask the Board to do just that. While these complaints may use the phrases "arbitrary, discriminatory and bad faith", the essence of the complaint is often that the union was wrong. However, it is not the Board's role to decide if a union was right or wrong as long as the union has not acted in an arbitrary, discriminatory, or bad faith manner.*

31 *There is also misunderstanding concerning the Section 12/13 process. The Board's materials clearly state that a complaint must include details of the conduct that is alleged to have violated Section 12. However, the Board continues to receive a large number of complaints that do not contain sufficient information to allow the Board to conclude whether Section 12 has been violated.*

The LRB policy bias is evident in my case:

a. My rights to Compassionate Care Leave were violated in the Collective Agreement signed by my legal representative. Since 2006, the employer and union have breached the contract with the wording:
"Compassionate leave will only be allowed if there are spare drivers available."
b. Regardless of the wording in the CA, I had a right under the ESA to Compassionate Care Leave. (Part 4 ESA)
c. The settlement that the TLU#31 accepted and imposed on me went below the Part 4 ESA provision covering the Compassionate Care Leave. I identified the issue before the LRB providing sufficient information and detail:

'6. If the Union proceeded with your grievance what was the outcome?

The outcome is that I was denied Compassionate Care Benefits which I had approval for from the Federal Government: the right to absence and the right to privacy.

10. *What remedies are you asking the Labour Relations Boards to order if the LRB finds in favour of your complaint? For example are you asking the Labour Relations Board to order that your grievance proceed to arbitration?*

I request a review by the ESA Branch to ascertain the responsibility of the employer to inform the employee of the CCB.

I would also request a confirmation from the ESA Branch that one the CCB benefits are claimed that all the rights are in place for the employee including the right to absence and the right to privacy.

I request that the two grievances (10 day suspension and the OT daily for spare board operators) be returned to arbitration.

11. *Have you made a complaint about this matter elsewhere? (for example another tribunal, government agency or the courts)*

Yes

ESA Branch. I was contacted and told that the CA of the Teamsters in place and that I would have to access that agreement to claim my ESA CCB.

Additional space for answering question if needed.

My representation for the ESA CCB through the Teamsters Union is in contravention of the Act.'

The question that I raised in the s.12 complaint was the application and enforcement of 52.1 ESA provisions in the 10 day suspension grievance.

[55] A failure to consider the correct question can lead to a decision being found to be patently unreasonable: see *Canadian Broadcasting Corp. v. Canadian Wire Service Guild* (1999), 1999 CanLII 19022 (NL CA), 173 D.L.R. (4th) 385 (Nfld. C.A.), leave to appeal ref'd [1999] S.C.C.A. 324; *Ringer v. Workers Compensation Board (Manitoba)*, 2005 MBCA 37; and *Jones v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 458.

The LRB form for submitting the s.12 complaint is notable for the asterisks that are found only at question 7 and 8. I would like the BC Ombudsperson to ask and receive a written explanation from the LRB in this regard.

*7 – Give all the relevant details of your complaint

*8 – Explain why you say the Union's representation or response was arbitrary, discriminatory or in bad faith (See Section 12 Guide).

Under question *8, I answered:

'CCB were confirmed beginning September 5, 2017. The delay in the application was entirely due to the:

- The employer (specifically Dave Wilson) did not have knowledge and did not inform the employee
- The union (specifically Anthony Kirk) did not have knowledge and did not inform the employee
- The CA has not been updated and did not include the specific working for the CCB
- Dave Wilson never requested the CCB certificate'

In the BCLRB 165/2018 decision:

*'49 – The Complainant's objection under the heading "reasoned Decision" is that: compassionate care benefits "were confirmed beginning Sept 4, 2017". **I infer** that her concern is that there was a significant delay between that date of her absence and the date that the compassionate care benefits were approved.*

*50 - It is unclear to me how a "delay in the application" – **which I take to be a reference** to the Complainant's application for compassionate care benefits – constitutes a decision of the Union - reasoned or otherwise.'*

Jones v. British Columbia (Workers' Compensation Board), 2005 BCCA 458 (CanLII), <http://canlii.ca/t/1lnnd>,

[36] It may be possible to adapt that ***Pushpanathan*** structure by saying that a decision that does not demonstrate performance of the statutory delegate's public duty is patently unreasonable, or even to approach the question as one of jurisdictional error demonstrated by that non-performance of the public duty such as discussed by Bastarache J., *supra*. However, those approaches, in my view, unnecessarily cloud the view of the real issue and hide the question that must be answered, which is whether the statutory delegate, the MRP in the case at bar, fully performed its public duty. If not, in regard to the MRP, the question then becomes whether the court should exercise its discretion in favour of Mr. Jones.

I am self represented in this matter. After two years of reading legal positions regarding administrative law, the LRB and the interpretation of statutory law, I am perplexed at why a labour lawyer would "infer" the matter to be a delay in receiving monetary benefits under the EI program and disregard the statutory entitlements being the right to absence.

The primary and critical right to absence was established with the Compassionate Care Certificate on September 5, 2017. I stated numerous times in the application that I was claiming the right to be absent for the October 2017 time and that the

application of discipline or the acceptance of a settlement was in violation of my statutory entitlements.

Once the Compassionate Care Medical Certificate was signed and submitted to the EI Commission, the secondary rights are EI benefits for an applicant that has 600 hours of insurable earnings. It is not reasonable to infer that I submitted a s.12 complaint solely because there was a delay of four months to receive EI benefits.

By doing so, the LRB categorized my s.12 complaint to be in their view a 'vexatious and without merit' complaint. They infer that I was simply unhappy with the union's service and disregarded my issue of statutory entitlements.

The **delay** of four months <u>being the DATE that I presented the certificate for signature at our GP's office</u> is significant:

- In September 2017, the employer failed to observe the 'Seven Day Rule' and submit a Record of Employment to the EI Commission. As the administrator of the EI fund, as noted in the CA, it was the responsibility of the employer to submit a ROE and to inform me of my rights and benefits under the insurable earnings program. They did not.
- I did not have the necessary Compassionate Care Medical Certificate after I had been absent from insurable earnings for 10 days in September 2017.
- this is 36 days prior to the October event that I was punished with 10 days of suspension while providing care to my husband.

I questioned the interpretation of the word "delay" in the reconsideration to the LRB. This was met with the privative clause of RG Properties.

In my reconsideration application I stated:

'The order, made by the Board in the first instance (November 8, 2018) has operated in an unanticipated way and has had an unintended effect in its particular application. The delay is a factor to explain the situation but is not the evidence in itself.

Due to this mistake on the part of the applicant, the original panel decision (BCLRB No. 165/2018) is inconsistent in respect to the principles expressed or implied in the

Labour Relations Code or the statute dealing with labour relations notably Employment Standards Act Part 5 "Requirements of this Act cannot be waived.", concerning the basic rights in Part 6 (Leave and Jury Duty). The July 6th, 2018 settlement that was accepted by the Teamster Local #31 (the sole bargaining agent) negotiated lower standards than those basic rights contained in Part 4 of the Act.'

United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, Local 2009 v. Auyeung, 2011 BCCA 527 (CanLII), <http://canlii.ca/t/fpdv1>

[16] The second prong of ground two was the appellant's assertion that the Board impermissibly expanded the scope of s. 12 of the *Code* through its interpretation or application of the *ESA*. The judge rejected this contention, stating, among other things, at paras. 101(5) – (6):

The Board's determination that the [appellant] breached s. 12 was not dependent upon the [appellant's] ill-fated pursuit of the Respondent Employees' rights under s. 64 before the Employment Standards Branch.

It was the failure of the [appellant] to adequately assess the risk that the Settlement Agreement could bar the pursuit of those rights in any forum which was the foundation of the Board's determination that the [appellant] breached the duty it owed to the Respondent Employees under s. 12 of the *Labour Relations Code*.

https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/2010_65-1_6.pdf

Another issue raised by the general lack of success of Section 12 complaints is the apparent misunderstanding on the part of complainants of the purpose and application of Section 12. In looking at the specific details of the 138 cases included in this analysis, and the BCLRB's assessment of the complaints, a number of themes consistently reoccur. The application of Section 12 does not determine the merits of a grievance; instead, it assesses the union's behaviour in managing the grievance. A union's behaviour need not be consistently faultless; instead, the application of Section 12 assesses the totality of a union's behaviour across time, and the effect of the totality of that behaviour.

Again, without a judicial review by the BCSC, there is no avenue for a unionized employee to access their individual statutory entitlements through the controlled mechanism of the union grievance process.

The TLU#31 CA violates Part 4 of the ESA. The TLU#31 controls the grievance. Myself and 62 unionized employees at PG Transit have no ability to secure their individual statutory entitlements.

7. **The principles of the Labour Relations Code is to uphold the rights of the employee.**

The provisions of the Act were deemed irrelevant under an 'assumption' by the arbitrator.

44 The Code requires that, in certain circumstances, trade unions investigate and make themselves aware of relevant information. I find that, even if I assume the Complainant's entitlement to compassionate care leave was relevant to the Suspension Grievance, the Union made itself aware of her entitlement to that leave and took steps to gather necessary facts.

*52 I find that those factors are **not relevant** to the question of whether or not the Union reached a reasoned decision.*

*53 Regardless, of the four factors listed, **two relate entirely to the conduct of the Employer rather than that of the Union** (i.e., that "the employer…did not have knowledge and did not inform the [Complainant]" of her entitlement to compassionate care benefits, and that the Employer "has never requested the [compassionate care benefits] certificate.").*

Sandvoss v Prince George Transit Ltd., 2018 CanLII 106276 (BC LRB), <http://canlii.ca/t/hw14p>

I feel that the LRB arbitrator was outside the jurisdiction of the tribunal when first considering the statute and then deeming that statutory entitlement to be irrelevant to the situation.

The LRB arbitrator did not give any legal reasoning for why the Compassionate Care Leave was 'not relevant'.

In comparison, a reconsideration by the Employment Standards Branch Tribunal, the fact of law would be stated.

The question posed to the LRB arbitrator was the interpretation and the enforcement of 52.1 ESA Compassionate Care Leave .

In the BCSC decision, the union stated:

[46] The Union notes that in the Original Decision the Board considered the petitioner's arguments including her entitlement to compassionate care benefits and leave.

[47] The Union argues that compassionate care benefits are not the same as compassionate care leave. ***There is no evidence that she applied for leave.***

BC EST #D156/00 Hana Fischer(" Fischer ") - of a Determination issued by - The Director of Employment Standards(the "Director")

Section 52 sets out the entitlement to family responsibility leave. Section 54 deals with the duty of an employer to comply with a number of leaves, including Section 52, outlined in Part 6 of the Act. Fischer was entitled to up to 5 days, as she had applied for family responsibility leave by way of her letter of April 12th. That put the request under Section`52(b). There is no argument Fischer did not request "family responsibility leave". She was unaware of the provision in the Act until the hearing. ***The fact she did not specifically use that terminology did not diminish her entitlement.***

That raises the question of the responsibility of the employer to make employees aware of the provisions of the Act. For example, if an employee fails to apply for annual vacation the employer is obligated to inform them they must take such leave. I do not believe an employee should suffer as the result of the failure by an employer to be familiar with the provision of the Act.

Temiskaming Lodge Limited v. Canadian Union of Public Employees, Local 3866, 2006 CanLII 53947 (ON LA), <http://canlii.ca/t/1s3x1>,

In my view, and without dilating on the broad purpose and intent of the Act (see, for instance, Re Rizzo & Rizzo Shoes Ltd. 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 (S.C.C.)) the contest is barely joined. Like the right to refuse unsafe work under the Ontario Occupational Health and Safety Act, ***no 'magic words' need be uttered to invoke the entitlement.***

International Brotherhood of Electrical Workers, Local 115 v The State Group Inc., 2019 CanLII 22129 (ON LRB), <http://canlii.ca/t/hz99h

2. At issue in the grievance is the question of whether the responding party ("State") has complied with the personal emergency leave provisions contained in section 50 of the Employment Standards Act ("the ESA"). The grievance procedure is the prescribed manner for enforcing the ESA where an employer is bound by a collective agreement (see section 99(1) of the ESA)

BCLRB No. B63/2003

70 As well, unions are not law firms. Unions are not expected to meet the standards required of a lawyer in respect to either procedural or substantive matters. It is only when the alleged carelessness of a union reaches the level of blatant or reckless disregard for the employee's interests that the union can be said to be misusing its exclusive bargaining agency and acting arbitrarily within the meaning of Section 12.

71 If we were to paraphrase the most common misconception of Section 12, it would be: "If you are not happy with what your union is doing, make a complaint to the Board and they'll look into it." In the previous section of this decision, we have addressed the misconception inherent in: "If you're not happy with what your union is doing". It should be evident from the above analysis concerning the scope of Section 12 that the Board does not have jurisdiction to entertain complaints from employees about what they perceive as poor service from their unions: complaints about rudeness or delay in replying to phone calls or correspondence. Those are matters for the union's internal complaint process or for consideration when the leadership of the union local runs for re-election. We hope we have made clear that there is a vast difference between unhappiness with the union and the Board's jurisdiction under Section 12.

The issue is the interpretation and application of a individual's entitlement under the statute. This is NOT a complaint about rudeness or delay in replying to a phone call.

To be forced into an judicial review in the BC Supreme Court for the establishment of the unionized employee's individual statutory entitlements is unfair and it has been recognized as recently as 2019:

Report on the Employment Standards Act A Report Prepared for the British Columbia Law Institute by the Members of the Employment Standards Act Reform Project Committee BCLI

https://www.bcli.org/wordpress/wp-content/uploads/2018/12/Employment-Standards-Act.pdf

Report no. 84 December 2018

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• Making the minimum standards inapplicable in collective bargaining encourages collusion between employers and sham unions to arrive at substandard terms. This creates competitive advantages for employers who have these agreements. Competitive pressures will in turn cause general deterioration in standards.

• An individual worker should always be able to complain to the Employment Standards Branch of a contravention of the ESA. Enforcement of the Act should not be delegated to unions, and a worker who has been the victim of an ESA contravention should not be placed in the position of having to battle the union as well as the employer if the union is indifferent or unwilling to pursue the matter.

In the next decision, the BCCA determined that management was required to consider compliance with the School Act. The BCCA found that the result of the arbitrator's misinterpretation of the Act meant that the arbitrator did not determine the bona fide opinions of the management and therefore wrongly found that the issue was to be unarbitrable.

British Columbia Teachers' Federation v. British Columbia Public School Employers' Association, 2011 BCCA 148 (CanLII), <http://canlii.ca/t/fks8v>

[26] The arbitrator appears to have concluded that because the consultation and reporting requirements had to be completed by late September or early October in each year, the requirement that the principal and superintendent be of the opinion that the class organization be appropriate for student learning was also to be completed in that time-frame. In the result, he found that compliance with s. 76.1(2.3) was to be determined at the end of September of the school year. He considered that subsequent events that might affect the appropriateness of the class for student learning were irrelevant to the question of whether the requirements of s. 76.1(2.3) were met.

[32] As I interpret s. 76.1(2.3), the principal and superintendent were required, when the situation came to their attention, to consider whether the organization of Ms. Battand's class continued to be appropriate for student learning. If they were of the opinion that it did not continue to be so, the school board had a responsibility to make whatever changes were necessary to bring the class back into compliance with s. 76.1(2.3) – either by making accommodations to ensure that the organization of the class became appropriate, or by transferring a student with an IEP to another class.

[33] As a result of the arbitrator's misinterpretation of s. 76.1(2.3), he did not determine whether Ms. Battand's class was organized, in the bona fide opinions of the principal and superintendent, in an appropriate manner in April 2009. Instead, he wrongly found that issue to be unarbit

I need to conclude this for my own mental health. The issues are evident but I will summarize to reduce your need to phone me:

- As a unionized employee, I was denied access to a government agency due to 3(7) of the ESA
- The CA that I was under violated Part 4 of the ESA. It is a continuing violation to March 2021
- The union representing me handled the grievance without referencing the entitlements under 52.1 ESA
- The union requested that I obtain the Compassionate Care Medical Certificate. I submitted that to the union on February 9, 2018 in the presence of a witness.
- The TLU#31 accepted a settlement that violated my entitlements under Part 4 of the ESA.
- I was denied access to a lawyer to review the settlement.
- The LRB reviewed my s.12 complaint and denied it deeming that Compassionate Care Leave was not relevant.
- The LRB reviewed my reconsideration and denied it citing its privative clause.
- The Office of the Ombudsperson did not refer me to judicial review
- The BC Human Rights Tribunal is now my only access to establish my individual statutory entitlements of 52.1 ESA.

> …..the executive branch's administrative justice system is a justice system in name only. Failing to conform to rule-of-law principles or constitutional norms, its judicial tribunals are neither independent nor, in law, impartial and are on providentially competent.

Unjust by design: Canada's administrative justice system Ellis, S. Ronald ISBN 978-0-7748-2477-4 UBC Press

I request a written reply to my complaint before the Office of the Ombudsperson.

Respectfully,

(1) February 1, 2019

Megan,

Thank you for your time yesterday.

This is a long and convoluted situation but it boils down to the fact that I believe the Teamsters Union has failed to represent the membership under statutory law..... twice. Trying to wrap up these problems with a tidy bow is difficult. I hope that I conveyed the points in this email.

1) **Compassionate Care Benefits - ESA Part 6 Leaves and Jury duty**

The discipline that I received (10 day suspension) for the events of October 10-12, 2017 is void because, under statue law, I had a right to be absent. This is a non-negotiable basic right and the settlement the union accepted is illegal.

On October 10-12, 2017, I am in receipt of funds under the Compassionate Care Benefits (CCB) being a EI payment record. I was entitled to the rights of that statue law regardless that the contract provision (CCB) being absent from the Collective Agreement between PGTransit and the Teamsters #31 Local.

In the settlement letter of July 6th, 2018, the reduction of the 10 days suspension down to a three day suspension is illegal according to the statute. The implication of the settlement is that the reduction to a 3 day suspension is to address a charge of insubordination on October 8, 2017 when D. Wilson demanded that I attend work on the 10th. Also, the charge of insubordination is to address that I did not respond to his request for a phone call at that time.

There can not be an acceptance of one provision of the statute (three days of leave under CCB for October 10-12) and not the acceptance of another provision (request for leave under CCB).

'*Once the employee requests leave from the employer, the employee is entitled to the leave. There is no requirement for the employee to make the request in writing or to give the employer advance notice. However, the employee may want to speak to the employer about the possible need for a leave when they first become aware of it.*
If the employee has not obtained a certificate the first time leave is required, the employee is still entitled to the leave. The employee would have to give the employer the certificate as soon as it is reasonably possible to do so. '
https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/factsheets/compassionate-care-leave

By the definition above, I met the request requirements for leave under this statute and went beyond those requirements. I applied for leave of absence in a timely manner (21 days), I obtained a doctor's note to further describe the need for the absence (October 2), I submitted a cardiac specialist medication

script after the absence, and finally, I applied for and was granted a Compassionate Care Benefit certificate with the start date of September 4, 2017.

If I had had the CCB in place before the October 10-12th absence, the management could not have denied my absence. Since I was granted the CCB after the fact, it still means that I have the right to the absence. D. Wilson calling or communicating with me on October 8th, 2017, was inappropriate and was in disregard of my rights and therefore, discipline can not be applied as per the statute. I emphasize that again.....it is a statutory law where I have rights that can not be negotiated. It is not contract law concerning discipline or leave under a collective agreement.

You will note that neither the union nor the management addresses the fact that I had claimed the CCB at any time in this discipline situation. PGTransit has never requested the CCB certificate at any point in this situation. Further, the discussion on September 14, 2018 with A. Kirk (TLU#31 Business Rep) revealed that the mediator used for the July 6th, 2018 settlement was not informed that Compassionate Care Benefits were in effect at the time of the discipline event (October 8th, 2017).

2) **Non payment of overtime for split shift work**

In D. Wilson 'Letter of Intent of Change - Spareboard Overtime Provisions' dated June 20, 2017 and January 11, 2018, the management position states 'There is no such provision for this in relation to the collective agreement' when referring to additional work being assigned, in a day, to the Spareboard drivers. I conclude that management, in this communication, acknowledges that the collective agreement is without a contract provision regarding extended daily work and therefore, the minimum of the ESA applies in relation to split shift work. That conclusion would mean that any work assigned, that exceeds 12.5 hours split work configuration, is to be paid overtime wages.

The union's acceptance of the October 15, 2018 settlement is illegal as it contradicts the ESA statute (S. 33 split shift) which then negates split shift overtime.

The settlement states that there is a 'difference of opinion about combining Spareboard shifts and calculating Spareboard overtime' and the parties agree to a compromise: this compromise denies natural justice before an arbitrator. There can be no stated 'difference of opinion' that supersedes section 33 of the ESA regarding payment of split shift work in excess of 12.5 hours. The union agreed to a settlement that negatively affects the wages of the members, below the minimum standards and in contradiction to the ESA.

Retaliation:

Attached is one of the instances that shows the toxicity of the relationship that existed between me (as a Union Shop Steward) and D. Wilson (as the Operations Manager). September 3rd, 2017 was the proposed time of this meeting and September 4th was the date of my husband's heart attack.

D. Wilson informed me about this upcoming meeting approximately August 24th. I was asked to attend his office with another driver who D. Wilson was accusing of being insubordinate. I took a copy of the meeting notice and contacted the Business Rep since a meeting scheduled on the Sunday of a holiday

weekend can not be an unpaid event: it has to be a minimum call out of 4 hours pay for bid drivers and 2 hours for spareboard drivers. Over 48 people would be attending this meeting under threat of 'insubordination' if they did not have an appropriate written excuse for being absent.

I sent an email, attached the notice and requested that the Business Rep contact D. Wilson and confirm the exact pay for this meeting.

The meeting notice was put in everyone's mailbox and there was huge outcry in the driving staff. I was getting numerous phone calls and text communications from people that had booked family events that weekend, trips out of town and more.

The Business Rep did contact D. Wilson and outlined the necessary payment of wages to attend a scheduled meeting. D. Wilson did not expect to pay anyone, anything. Supposedly, he was quite upset about being told that he was required to compensate the drivers attending.

The meeting was then cancelled. Other drivers asked about my involvement in the event and I acknowledged that it has been my action, through the Business Rep, to question the meeting due to payment of wages. D. Wilson fully knew that I was the instigator of this action.

The other example of a veiled threat is the first page of the attachment under your name. I wrote ' Note here!' to draw your attention.

Communication from the LRB:

I found that this decision was the explanation that I needed to fully understand the position of the LRB and the denial of my leave. It allowed me to understand that the reasoning for the leave had been overlooked: the LRB believed I was disputing the contract law where the CCB were missing from the TLU#31 CA.

No - I am looking at the statutory law of CCB.

Instead of simply quoting RG properties decision to explain the denial of the leave to grant a reconsideration, the LRB could have expressed their view that they believed that contract law was the reasoning for denial.

BCLRB B76/2016 The Board has reflected these principles in Section 12 cases involving collective bargaining. For instance, in British Columbia Distillery Co., [1977], BCLRB #85/77 (“Seagram’s”) the Board said the following

…A trade-union is the legal bargaining agent for the entire unit of employees -- often a large, all-employee unit which has been designed to minimize industrial unrest (see B.C. Ferry Corporation [1977] 1 Canadian LRBR 526). The simple fact of the matter is that not all of the interests of these employees can be entirely satisfied in any one set of negotiations. The union chosen by the employees to be their exclusive bargaining agent must have the authority under the Labour Code to make the critical choices about which contract items will be negotiated with the employer: e.g.

whether to pursue healthy trade adjustments in lieu of a slightly higher across-the-board wage increase; or whether to emphasize pension benefits instead of longer, paid vacations. As these examples indicate, the union's decisions will favour some employees and others may not like them. But it would be quite inconsistent with a system of free collective bargaining if the Labour Board, later on, were entitled to make the judgment that such choices were unreasonable, unfair, and thus illegal. (And it is for essentially that same reason that this Board does not sustain Section 6 complaints of bargaining in bad faith, on the grounds of the substance of contract proposals made by a union or an employer). See Noranda Metal Industries Ltd., [1975] 1 Canadian LRBR 145 at p. 159. Even more pertinent, having sorted out the priorities in its own bargaining agenda, the union must then try to secure a more or less acceptable package from the employer, often in a crisisladen atmosphere with a major strike or lockout hanging in the balance. It would inhibit that process, it would detract from the possibility of peaceful settlement of bargaining disputes in this Province, if a trade-union were always looking over its shoulder at this prospect: that dissident employees could come to the Board and readily attack the reasonableness and fairness of any contract terms which did not favour them; or could make the Union justify on the merits why it did not pursue a particular benefit in which these employees were particularly interested. Thus, in fostering fair representation in the bargaining process, the law must place its primary reliance on the employees themselves. If the employees are dissatisfied with the results of particular negotiations, then they are entitled to reject the settlement in the ratification vote. And if - 10 - BCLRB No. B76/2016 they are consistently unhappy with their union bargaining posture, then the employees may organize to have that union displaced or replaced. It was in precisely that spirit that the Union responded to this charge of unfair representation, by pointing out that at a ratification meeting the back-to-work understanding -- including the superseniority clause -- was approved by a large majority vote. pp. 8-9 28 The Board has recognized that seniority rights are of high importance to the trade union movement and its members. Seniority rights can confer significant benefits and rights which can directly affect important terms and conditions of employment for union members. The Board has addressed the significance of seniority rights in the case of Health Employers Association of British Columbia, BCLRB No. B232/2012, as follows: We observe that while seniority is not a statutory right, it is nonetheless one of the most important, if not the most important, right that the trade union movement has been able to win for its members in its modern day history. The importance of seniority and the concerns that a threat to seniority unleashes cannot be overstated. The importance of seniority has been repeatedly noted by this Board in its jurisprudence: Group of Seagrams Employees, BCLRB No. 85/77, [1978] 1 Can LRBR 375; Kelly Douglas and Company Limited, BCLRB No. 8/74, [1974] 1 Can LRBR 77 ("Kelly Douglas"); Granville Island Brewing Company Ltd., BCLRB No. B418/95). (para. 9) The Board has remarked that seniority is a "critically important employee interest" and a union would be expected to treat a member's seniority rights "with more care and concern", James W.D. Judd, BCLRB No. B63/2003, 91 C.L.R.B.R. (2d) 33 ("Judd"). 29 In Seagram's, the Board made the following comments: Let me summarize my basic conclusions: i. In the normal course of events, the Labour Board should be quite cautious about applying the duty of fair representation under Section 7 [now Section 12] of the Labour Code so as to upset contract terms previously negotiated between a union and an employer. ii. However, because of the special nature of job seniority provisions, a considerably greater degree of Board scrutiny is justifiable for contract changes which dilute vested seniority rights. iii. And in particular, the negotiation of superseniority clauses for the benefit of particular groups of employees must be affirmatively justified by the trade-union. (p. 18) - 11 - BCLRB No. B76/2016 30 In examining a union's conduct under Section 12 in the collective bargaining context, the entire factual context of the union's actions must be taken into account. The Board recognizes that in order to come to a collective agreement, unions must make compromises which sometimes can have an asymmetrical effect on members in the bargaining unit. The Complainants allege the Union has violated all three aspects of Section 12. I will proceed to rule with respect to each aspect of Section 12 below.

Mike Morris, MLA April 23, 2020

Please submit my communication to the Director of Employment Standards BC.

I respectfully request a written reply confirming my submission from your office and the office of the Director of Employment Standards.

Re: Interpretation of Compassionate Care Leave – Act Part 6, Section 52.1

I am requesting the Director of Employment Standards to intervene in my BC Human Rights Complaint #18672 to make legal submissions only on the narrow issue of whether (assuming it is found to have occurred) an employee's failure to give notice under section 52.1 subsection (2) and/or subsection (3) of the ESA disentitles that employee to the leave under the Act.

I reference the case below in support of this request:

International Brotherhood of Electrical Workers, Local 115 v The State Group Inc., 2019 CanLII 22129 (ON LRB), <http://canlii.ca/t/hz99h

2. At issue in the grievance is the question of whether the responding party ("State") has complied with the personal emergency leave provisions contained in section 50 of the Employment Standards Act ("the ESA"). The grievance procedure is the prescribed manner for enforcing the ESA where an employer is bound by a collective agreement (see section 99(1) of the ESA).

International Brotherhood of Electrical Workers, Local 115 v The State Group Inc., 2018 CanLII 55307 (ON LRB), <http://canlii.ca/t/hslc3

3. The Director of Employment Standards ("DES") seeks to intervene in this proceeding on an amicus curiae basis to make legal submissions only on the narrow issue of whether (assuming it is found to have occurred) an employees' failure to give notice under sections 50(3) and/or (4) of the ESA disentitles him/her to leave.

4. I note that the DES is responsible to administer the ESA (see section 85 of the ESA), and had this proceeding arisen as an application to the Board for review under the ESA it would be a named party (see section 116(7) ¶6).

Background:

In September of 2017 my husband had a heart attack. After hospitalization in Prince George he was sent via air ambulance to the Kelowna General Cardiac centre.

At that time, I was employed with BC Transit as a bus driver for the contractor, PG Transit (PGT) also known as Pacific Western Transportation. On an emergency basis, I informed my employer of my need for absence and attended my husband in hospital in Prince George and later, via my own vehicle, to Kelowna.

I was absent from insurable earnings for 10 days. My employer did not issue a Record of Employment nor did my employer alert, direct or inform me of the benefit programs available through the EI Commission.

On my return to work, I gave 21 days written notice that I needed time off to be with my husband, to drive to Kelowna, for the mandatory recall due to the heart surgery. The employer denied my request citing 'Too many operators off'.

I contacted my union representative, Teamsters Local #31 (TLU#31) who directed me to obtain a doctor's note for reasoning of the absence. I submitted the doctor's direction stating that I was to accompany my husband and the employer again denied my request. The employer suggested self-accommodation using the Northern Health bus and a transfer to Greyhound at Cache Creek. This service connection did not exist.

In the days prior to the October 2017 recall appointment, my husband was suffering from an undiagnosed complication of a nitroglycerin reaction affecting his sight and general condition.

I informed my employer of the need for my absence to attend the scheduled appointment with my husband with over 36 hours of notice.

The employer responded to my absence notice and interpreted my actions as 'blatant insubordination' for failure to report for work after 'being denied twice'.

On the return to Prince George, I was suspended from my scheduled work shift. I attended the subsequent meetings as requested by the employer. I submitted the cardiac surgeon's script noting the medication change of 'Stop Nitro'. I explained the situation to the employer.

The discipline was a 10 day suspension from duties. In 4 years of employment at PG Transit, I did not have a single disciplinary event.

The grievance process was initiated. Through out the grievance process there was no reference to the Employment Standards Act Compassionate Care Leave or that of Family Leave by either

the union or the employer. The Collective Agreement is silent on the section 52.1 of the Act. The TLU#31 business representative was out of the country during this time. The grievance was unresolved.

During the arbitration process, I was directed by the TLU#31 business representative to obtain a Compassionate Care Medical Certificate.

Four months after the September 2017 incident, I had a signed CCB medical certificate which I then provided a copy to my legal representative, the TLU#31.

I requested, in writing, to my employer that they issue an ROE for my absence in September 2017 due to Compassionate Care. Instead, the employer terminated my employment for one day and issued an ROE for February 25, 2018.

I applied for Compassionate Care Benefits from the EI Commission who antedated my claim, without contest, to September 2017. I was compensated, by the EI Commission, for the absence of 10 days in September of 2017 and for the October 10-12th, 2017 recall appointment.

In July 2018, the TLU#31 and the employer settled the 10 day suspension without my participation. The terms of that settlement were:

- the 10 days suspension to be reduced to a three day suspension
- PGT pay the equivalent of seven days' wages
- application of an additional 12 months of discipline totaling 21 months for the October 2017 event (exceeding the CA provision of 12 months)
- additional discipline was for 'similar misconduct'

The TLU#31 imposed the settlement agreement. After 70 days of silence from the TLU#31, I requested a meeting with my business representative. I was required to sign a two page settlement document that indemnified both the employer and the union from further action through the LRB, ESA and the BCHRT to release the seven days' wages. I refused to sign.

I quit my employment in November 2018 citing constructive dismissal due to the discipline applied while I was on Compassionate Care Leave and the imposed settlement terms.

Through the LRB, I filed a section 12 complaint B165/2018. In my application I stated that:

'I request a review by the ESA Branch to ascertain the responsibility of the employer to inform the employee of the CCB.

I would also request a confirmation from the ESA Branch that once the CCB benefits are claimed that all the rights are in place for the employee including the right to absence and the right to privacy.'

The LRB ruled:

44 – The Code requires that, in certain circumstances, trade unions investigate and make themselves aware of the relevant information. I find that, even if I assume the Complainant's entitlement to compassionate care leave was relevant to the Suspension Grievance, the Union made itself aware of her entitlement to that leave and took steps to gather necessary facts.

45- The Union challenged the Employer's decision to impose the Ten Day Suspension and filed the Suspension Grievance. The Union pursued that Suspension Grievance all the way through the grievance procedure and the matter was advanced to arbitration.

46 – The Union's prosecution of the Suspension Grievance was not arbitrary in this regard, particularly not when the Union's representation of the Complainant is considered as a whole, beginning from its decision to file the Suspension Grievance and ending with its decision to agree to the Employer's offer to settle.

The LRB denied my section 12 complaint.

Note that the TLU#31 did not reference, at any time, the Employment Standards Part 6 – Leaves and Jury Duty in the grievance process.

The TLU#31 did not contest the employer's failure to reply to the Step 2 union grievance. A request was made for the employer to release information regarding the impact to the company, the results of the investigation and the specific reason that the initial absence request was denied. None of these requests were answered by the employer.

The TLU#31 did not communicate to the employer that I had been requested to obtain and had obtained a CCB medical certificate.

The July 2018 settlement agreement did not address my individual statutory right to absence under section 52.1 of the BC ESA.

I was denied a reconsideration by the LRB.

At that time, I did not understand the implied privative clause of the LRB when they cited RG Properties in their denial.

I accessed the BC Ombudsperson office due to my concern that the LRB considered my case based contract law instead of statutory entitlements. The BC Ombudsperson office did not refuse my application as they should have based on jurisdiction. The office did not direct me to a judicial review process in Supreme Court. After a six month review, January 3 – July 3, 2019, the BC Ombudsperson closed the file.

The six month window for a judicial review had expired. I applied to BC Supreme Court for an extension. On the date of the 10 minute appearance before Judge Tinsdale, three lawyers

presented themselves at the Prince George Courthouse: counsel for the LRB, the employer and the union. The hearing was over two days in length.

BC Supreme Court:

Judge Tinsdale's reasons for judgement docket S1956514 are dated 2020 04 06.

[35] The petitioner argues that had she been informed about her rights to compassionate care leave none of this would have happened. The petitioner argues that she in fact demonstrated to PGT that she was justified in her absence from work as a result of her husband's medical condition.

[45] ….It should be evident from the discussion above that the union has a wide latitude in choosing the appropriate strategy – it is not up to the individual employee to dictate. It would be a rare situation where any other strategy than that advocated by the grievor would necessarily be arbitrary.

[46] The Union notes that in the Original Decision the Board considered the petitioner's arguments including her entitlement to compassionate care benefits and leave.

[47] the Union argues that compassionate care benefits are not the same as compassionate care leave. There is no evidence that she applied for leave.

"In any event, if statutory rights are to have meaning, they must be able to be enforced."

Allimant v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers, Local 9492), 2010 CanLII 76067 (ON LRB), par. 37, <http://canlii.ca/t/2f1ts#par37>, retrieved on 2020-04-09

37. In assessing requests for dismissal on this basis the Board starts from the proposition that a party with a legitimate complaint has a right to be heard. The Board makes this remark cognizant that it has determined this application does not disclose a prima facie violation of the Act. In any event, if statutory rights are to have meaning, they must be able to be enforced. Balanced against those considerations, however, is the oft-cited importance of expedition in labour relations matters. This is nowhere more fundamental than when dealing with the filing of complaints. Although the statute does not prescribe time limits for the filing of applications, the Board has developed a doctrine akin to laches. The leading case is the Corporation of The City of Mississauga, [1982] OLRB Rep. March 420, where the then Chair of the Board stated:

Misrepresentation:

In the BCHRT document disclosure process, information has been revealed to support the following. Due to the confidential nature of the disclosure process, those documents are not available for me to submit.

S.C.C. File No. 38463

FACTUM OF THE INTERVENER, CANADIAN FEDERATION OF INDEPENDENT BUSINESS (pursuant to Rules 37 and 42 of the Rules of the Supreme Court of Canada)

Page 1

A. Overview

2. In the landmark decision of Bhasin v. Hrynew, this Court recognized the duty of honest contractual performance flowing from the common law organizing principle of good faith.

1 The Court unanimously held that, although the duty is not tantamount to a duty of loyalty or of disclosure, it requires contractual parties not to "lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract."

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3. Positive steps that mislead the plaintiff

24. In addition to the line of cases where courts have held that non-disclosure coupled with concealment of the facts constitutes a misrepresentation, courts have also held that non-disclosure coupled with other positive steps that mislead the plaintiff can constitute a misrepresentation.

25. General Teamsters, Local Union No. 362 v. Consolidated Fastfrate Inc.31 is one such case in the estoppel context. There, an employee took a leave of absence to pursue another job. Unbeknownst to the employee, the collective agreement required the union's consent to a leave in order to preserve the employee's seniority.

32 Despite having several opportunities to do so, the union did not draw this provision to the employee's attention or provide its consent, though a union steward "on several occasions allayed [the employee's] concern about the new job and told him not to worry as he had 90 days to see if it was going to work out."

33 The court held that the union was estopped from insisting on compliance with the consent provision, because the steward's conduct "went beyond the situation of silence or mere acquiescence" and misled the employee into thinking that the union supported the leave.

A - Is there an BC ESA obligation to inform to obtain the entitlement?:

International Brotherhood of Electrical Workers, Local 115 v The State Group Inc., 2019 CanLII 22129 (ON LRB), <http://canlii.ca/t/hz99h

26. Further, the obligation to provide notice as set out in subsection 50(3) is an obligation to advise that the employee will be taking "leave under this section". That obligation extends to all PEDs taken under section 50, both paid and unpaid. It is an obligation that the employee communicate that he will be absent from work, and that the reason for the absence is contemplated by subsection 50(2). Subsection 50(3) makes meaningful the employer's right under subsection 50(12) (formerly 50(7)) to verify that the reason for the absence legitimately falls within the scope of subsection 50(2). The Board has said on several occasions that no "magic words" need be used to convey the fact of the leave. There is no language used from which one could conclude that an employee must communicate that he is taking a paid PED. Further, such obligation does not make sense in the scheme of the section as a whole. Contrary to the suggestion of counsel for the ECAO, the entitlement to be paid for the first and/or second PED taken in the year does flow automatically from the Act. The first two absences for reasons contemplated by subsection 50(2) must be paid days. Subsection 50(8) could not be clearer on this point:

> *(8) The two paid days must be taken first in a calendar year before any of the unpaid days can be taken under this section.*

"***that no "magic words" need"***

(1) - BC EST #D156/00 Hana Fischer(" Fischer ")
- of a Determination issued by -
The Director of Employment Standards(the "Director")

Section 52 sets out the entitlement to family responsibility leave. Section 54 deals with the duty of an employer to comply with a number of leaves, including Section 52, outlined in Part 6 of the Act. Fischer was entitled to up to 5 days, as she had applied for family responsibility leave by way of her letter of April 12th. That put the request under Section`52(b). There is no argument Fischer did not request "family responsibility leave". She was unaware of the provision in the

Act until the hearing. ***The fact she did not specifically use that terminology did not diminish her entitlement.***
That raises the question of the responsibility of the employer to make employees aware of the provisions of the Act. For example, if an employee fails to apply for annual vacation the employer is obligated to inform them they must take such leave. I do not believe an employee should suffer as the result of the failure by an employer to be familiar with the provision of the Act.

(2) - Temiskaming Lodge Limited v. Canadian Union of Public Employees, Local 3866, 2006 CanLII 53947 (ON LA), <http://canlii.ca/t/1s3x1>,

In my view, and without dilating on the broad purpose and intent of the Act (see, for instance, Re Rizzo & Rizzo Shoes Ltd. 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 (S.C.C.)) the contest is barely joined. Like the right to refuse unsafe work under the Ontario Occupational Health and Safety Act, ***no 'magic words' need be uttered to invoke the entitlement.***

B - Did I invoke the ESA section 52.1 when I communicated the particulars of my family situation with the employer and with the TLU#31 legal representation?

International Brotherhood of Electrical Workers, Local 115 v The State Group Inc., 2019 CanLII 22129 (ON LRB), <http://canlii.ca/t/hz99h

27. Consequently, even if an employee's compliance with subsections 50(3) or (4) were a prerequisite to a PED (which I do not find it is), these employees were in compliance with those subsections. Both Mr. Cella and Mr. Bornais advised someone with authority over them that they would be absent from work. Both provided additional information indicating that they were suffering from personal illness. Mr. Cella told his foreman Mr. Guinee that he would not be in, and followed up with information revealing that he was ill and seeking treatment. While Mr. Cella ought to have communicated directly with Mr. Ackroyd pursuant to company directions, there was no suggestion that because of his failure to follow that protocol, Mr. Ackroyd was unaware of his absence. Nor would a failure to follow protocol disentitle him to the leave. Mr. Bornais told Mr. Ackroyd directly that he would not be in, and the contents of the text messages he received in reply clearly indicate that Mr. Ackroyd understood Mr. Bornais was absent due to illness. ***The grievors' communications satisfied the notification requirements of subsection***

50(3) and (4) of the Act. *Mr. Ackroyd did not testify that he was unaware of their absences at the time that they occurred. He testified that he did not become aware until after each man had returned to work that he was requesting to be paid for the absence.*

C - Did I advise someone with authority that I would be absent from work? Did I clearly present the information communicating the reasoning for the absence?

Yes. PGT acknowledged their understanding of my communication in the November 27, 2017 Response to Step 3 Grievance:

"*There are two paragraphs within the Grievance document that relate to the health conditions and explain what the family was going through at this time. I must reiterate that this is not the reasoning for which time off was declined nor do we exclude the fact that a family was dealing with a potential crisis.*"

Dave Wilson, Operations Manager PGT

'Both grievances succeeded, with the arbitrators holding that the right to a leave was not contingent on providing advance notification of the absence to the employer.'

International Brotherhood of Electrical Workers, Local 115 v The State Group Inc., 2019 CanLII 22129 (ON LRB), <http://canlii.ca/t/hz99h

28. The foregoing interpretation of section 50 and its application to the circumstances of this case is consistent with the only caselaw filed before me that dealt squarely with the question of whether notice under section 50(3) or (4) is a prerequisite to eligibility for PED. Those cases are Revera Retirement LP and Ryding Regency. Each case involved a collective agreement provision that deemed employment to terminate where an employee was away from work without permission. The grievor in each case absented him or herself from work without notifying the employer, but for reasons that fell within subsection 50(2) of the Act While the employees might be disciplined for failure to follow protocol, their absence from work could not be considered unauthorized in view of their statutory entitlement to it.

Service Employees' International Union, Local 1 v Revera Retirement LP, 2013 CanLII 9071 (ON LA), <http://canlii.ca/t/fwb2q>

[43] ……The instant case presents a particularly clear example of why personal emergency leaves may be needed by employees; furthermore, these parties are in agreement that emergency medical leave was, without doubt, required by the Grievor on this occasion. Article 17.03 of the collective agreement specifically incorporates the ESA, including of course its employee entitlement to personal emergency leave. I am not able to accept that some negotiated improvements to other different types of statutory leave entitlements (bereavement, sick leave) may open a door for an employer, in effect, to displace a separate freestanding entitlement to something as fundamental as emergency leave. With respect, in my opinion, if such a 'greater right or benefit' interpretation serves also to permit the termination of a long service employee because of a simple notice omission, public policy would be turned upside down. As stated previously, I see s.50 as creating a floor for personal emergency leave below which the parties cannot contract

Report on the Employment Standards Act A Report Prepared for the British Columbia Law Institute by the Members of the Employment Standards Act Reform Project Committee BCLI

https://www.bcli.org/wordpress/wp-content/uploads/2018/12/Employment-Standards-Act.pdf

Report no. 84 December 2018

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• Making the minimum standards inapplicable in collective bargaining encourages collusion between employers and sham unions to arrive at substandard terms. This creates competitive advantages for employers who have these agreements. Competitive pressures will in turn cause general deterioration in standards.

• An individual worker should always be able to complain to the Employment Standards Branch of a contravention of the ESA. Enforcement of the Act should not be delegated to unions, and a worker who has been the victim of an ESA contravention should not be placed in the position of having to battle the union as well as the employer if the union is indifferent or unwilling to pursue the matter.

The report clearly identifies the situation I am facing and yet, the project committee did not alter the BC ESA to allow personal autonomy of the unionized workforce regarding their individual statutory entitlements.

I am seeking equality under the law.

I request that the Director of Employment Standards intervene in BCHRT #18672.

Cheryl Sandvoss

Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000, 2003 CanLII 62912 (BC LRB), <http://canlii.ca/t/20wmc>, retrieved on 2020-10-26

Sandvoss v Prince George Transit Ltd., 2018 CanLII 106276 (BC LRB), <http://canlii.ca/t/hw14p>, retrieved on 2020-10-22

Labour Relations Code, RSBC 1996, c 244, <http://canlii.ca/t/53mjf> retrieved on 2020-10-22

B.C. Teachers' Federation v. British Columbia (Public School Employers' Association), 2011 BCCA 537 (CanLII), <http://canlii.ca/t/fpg69>

British Columbia Teachers' Federation v. British Columbia Public School Employers' Association, 2011 BCCA 148 (CanLII), <http://canlii.ca/t/fks8v>, retrieved on 2020-10-22

United Association of Journeymen, Local 170 v. Allied Hydro Council, 2016 BCSC 435 (CanLII), <http://canlii.ca/t/gnpb8>, retrieved on 2020-10-20

Health Sciences Association of British Columbia v. British Columbia (Labour Relations Board), 2014 BCSC 23 (CanLII), <http://canlii.ca/t/g2n5t>, retrieved on 2020-10-20

Labour Relations Code, RSBC 1996, c 244, <http://canlii.ca/t/53mjf> retrieved on 2020-10-20

Sandvoss v BC Labour Relations Board, 2020 BCSC 540 (CanLII), <http://canlii.ca/t/j6c1v>, retrieved on 2020-10-20

http://www.lrb.bc.ca/section%2012/B063$2003.pdf

https://mcgradylaw.ca/pdfs/Section%2012%20Article.pdf

Dunsmuir v. New Brunswick, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, <http://canlii.ca/t/1vxsm>, retrieved on 2020-10-16

British Columbia Teachers' Federation v., 2013 BCCA 179 (CanLII), <http://canlii.ca/t/fx3vg>, retrieved on 2020-10-16

https://www.employmentlawbc.com/duty-of-fair-representation-in-bc-the-judd-decision-bclrb-no-b632003-httpwww-lrb-bc-ca/

B.C. Teachers' Federation v. British Columbia (Public School Employers' Association), 2011 BCCA 537 (CanLII), <http://canlii.ca/t/fpg69>

1992 Legislative Session: 1st Session, 35th Parliament

HANSARD

THURSDAY, NOVEMBER 26, 1992

Afternoon Sitting

Volume 6, Number 24

http://leg.bc.ca/hansard/35th1st/h1126pm.htm

On section 13.

V. Anderson: As we look at section 13, which is procedure for fair representation of complaint, we notice that in the previous sections of this bill the minister was attempting to present a new approach and a new understanding. He has attempted to say, particularly in relation to natural justice, that they were creating a new awareness of possibilities for people to receive the justice that they deserve. In this particular section they have put forward some protections -- and I emphasize some -- for individuals in the workplace from the trade union and from their employers. However, the protections that they have put forward are only against the actions that are covered by the code itself.

As we know, in many actions that take place in our lives, the technical or legal regulations are not always the main problem. The main problem may be one of misunderstanding, of different jurisdictions or of communication.

In other areas this Legislature has seen fit to create the position of the ombudsman, so that when the regular systems break down and communication is not adequate to look at the root causes of the difficulty, there is the opportunity for this to met and countered.

There are many difficulties that people face in dealing with situations -- not only difficulties with the employer or with the decisions or actions of the union, but also difficulties with the actions of the labour board itself, the ministry or the departments of government.

These actions leave the individual unable to cope, because most employees are not in the position financially, physically or emotionally to take on whatever system happens to be turned against them, even if that system has turned against them by accident and not by design. It's very difficult for an individual who is cut off and has the feeling of being ostracized to begin to put forth the opportunities they need.

There needs to be in place some kind of opportunity for people to have their voices heard, to express themselves and to get others to join them. They need to find someone who will stand on their behalf as their advocate and make sure that the circumstances are looked at from all sides and all positions and are dealt with fairly, so they can be heard and feel that their needs have been considered.

We realize that in the code that this is attempting to replace, there was the opportunity -- although not proclaimed -- for the ombudsman position. I'm sure the fact that it was in the act had a detrimental effect, because people were aware of something they could have called on. Even in the explanations of that position, the concerns and items that needed to be taken into consideration were clearly described. In the activities of the Labour Relations Board itself, they would know that these conditions were there. They would be able to take these positions into account in their considerations, and they would be able to operate as if they were there and these positions were in place. The very fact that this opportunity was there and could have been proclaimed when the need arose was a very important position.

It is important that we express to the people of this province and the individual worker, however humble or great their position might be, that there is an opportunity for their positions to be heard, clarified and fairly dealt with. As we have seen in this particular act thus far, there are difficulties in the definitions. We have seen difficulties in the purpose of this act and each of the clauses we have dealt with in some detail; there is a lack of clarity as to the well-being of employees, particularly within whatever system they may work.

It is important that we take the concerns of these people seriously. As I indicated earlier in this discussion, the individuals who came into my constituency office and who I came to know in their circumstances even prior to becoming a member of the Legislative Assembly were those people who had gone through the system that was available to them. They had tried to deal with the appeals that were put before them and found that they got caught up in the bureaucracy. Because of the bureaucracy, not necessarily the evil intent of any person, there was no hope for them to resolve their circumstances. Not only was this a crisis in the individual person's life, but it became a crisis in their family life for their children, spouse and all who were closely related to them. It became a crisis within the community itself, for many lost their employment opportunities and their self-confidence, and many were forced into the other government support system when they should have been given the opportunity to clarify their situation and renew their lives.

In this act there must be an opportunity for these people to come through whatever difficult circumstances they find themselves in and have an opportunity and a channel by which they can proceed after a breakdown in employment, after a confrontation with the union, the employer, the Labour Board or the government to find a way to bring the pieces back together again. They must have some kind of help available to them in those circumstances. It seems to me that unless we put that kind of concern, thoughtfulness and opportunity into place, we are simply dealing with rules and regulations, not with the lives of people. It's the lives of these people that we must be concerned about, and who this bill is here to serve -- not that people must be dictated to or have to conform to the laws within the bill itself.

Naturally the laws need to be legal, and we have to take them into account. But when we discover in actual circumstances that the laws or the regulations are unjust, and when the people who enforce the regulations admit that what they're doing is not for the well-being of the people for whom they are doing it, they have no choice, because that's what the regulations say.

Time and time again, hon. Chair, in dealing with the social services system, people have been unable to get their needs met and have come to the point of a tribunal. In the tribunal they have sat down with the representative of the government and with their own advocate, and they have looked at the picture in total framework. Time and time again the representatives of the government have had to say that not only do we have to act upon this law, but we have to act upon the interpretation of the law -- namely, the regulations that have been passed down to us. Time and time again in that tribunal all three members -- the representative of the government, the representative of the individual and the neutral chair -- have read the act for themselves and have discovered that the regulations by which the workers were to operate in that circumstance did not meet the needs, and the act itself begged to be interpreted much differently. Time and time again the very actions, which technically were decided upon according to the regulations and the rules when they were reviewed in the common sense of an interrelated dialogue to look at all the issues in question, were overturned. Those judgments were upheld, and they received the compensation and the justice they deserved.

That kind of opportunity is not given here in "Procedure for fair representation complaint." The material that follows does not cover the circumstances that need to be covered. They cover in part what relates to trade union actions or employers' actions; but they do not cover the actions of the labour board itself and its decisions, nor do they cover the actions of the bureaucracy of the ministry in which they are so often caught.

Therefore, hon. Chair, I would like to make an amendment to section 13, by the addition of the following subsection (3):

"The Lieutenant-Governor-in-Council shall appoint a person to be called the labour ombudsman, who shall hold office during good behaviour for a term of five years, and for additional terms the Lieutenant-Governor-in-Council appoints, and be paid the remuneration the Lieutenant-Governor-in-Council determines."

Hon. Chair, there's an extra copy for the hon. minister, if he would wish to receive it.

"13(4) The labour ombudsman has the power to investigate any decision or recommendation made, or act done or omitted, relating to a matter of administration, including the merits of a policy, and affecting any person, by (a) any board, commission, council or other tribunal under this act or any other act administered by the minister, or any branch or agency of the Ministry of Labour...."

The Chair: I should have advised the member that under standing orders his time has expired. Would the member please take his seat.

Hon. M. Sihota: Hon. Chair, I have no difficulty with the hon. member making the amendment. I'll speak to it in a second whether it's in order or not. There's certainly no need for him to read it. We do have a copy of it now. It goes on for some five pages, I believe. I don't think it's necessary to have it read if it's filed. I'd like to raise a procedural issue, but....

An Hon. Member: He has the right to read it.

The Chair: Hon. member, it is customary to table your amendment -- and the member is permitted to make a statement. The minister indicated that he is prepared to accept the amendment without a decision with respect to it being in order or not. There has been intervening debate. This would allow the member to continue if he would like to speak to his amendment.

V. Anderson: This particular amendment is very similar to that which has been a possibility in the last two labour bills in this province. I believe it was originally introduced in the labour bill presented by the then NDP government in 1973. Some of the comments that were made about it at that time are particularly appropriate. I quote from Hansard on the validity of this particular amendment.

Hon. M. Sihota: Point of order. Before we get into an extensive speech on the amendment, perhaps it would be appropriate for the Chair to determine whether or not the amendment is in order. I would at least like to have the opportunity to put to the Chair the argument that it is not in order.

Section 13 lays out a procedure with respect to complaints made under the provisions of section 12. It does not deal with any matter that in any way relates to complaints about the Labour Relations Board or the ministry. The purpose of the amendment goes far beyond the scope of section 13. It is not relevant or tied in with section 13. It deals with a new topic. The bill has been debated in principle already. At that time I believe the hon. member did raise this issue. But from a procedural point of view I cannot see how it has any relevance to the duty-of-fair-representation provisions as they are contained in the findings made by the board. This goes beyond the duty of fair representation and talks about the powers of the ombudsman to review the legislation. "The ministry, any board, council or other tribunal that is established under this act, any act administered by the ministry, any branch or agency of the Ministry of Labour, or any officer, employer or member thereof...." So it goes well beyond the scope of this section, and I would argue that it's not relevant.

The Chair: Thank you, hon. minister.

Hon. member, under your section 13(3) you make reference to the need for an ombudsman. Of course, as all members know, any matter that involves an expenditure by the Crown has to come in the form of a message from the Lieutenant-Governor. On that point alone the amendment would not stand the test of being in order, and I would so rule that it is out of order.

G. Farrell-Collins: It's perhaps unfortunate, I guess, that there wasn't some provision made in the bill for that type of representation. I think the words of the member for Vancouver-Langara were very wise and appropriate. All I can say is that it is unfortunate that there is not a provision somewhere in section 13 for that type of amendment, but so be it. That's the government's choice, I guess. We've raised our opposition and proposed our amendment.

V. Anderson: Hon. Chair, I appreciate your ruling and understand your particular reason for that ruling. But I would also urge the minister to reconsider, not the ruling of the Chair but the need for this kind of provision. I would urge that this kind of provision be made available as the act proceeds, because it could be made not in the fashion that it was presented here but simply by moving to add the concerns related here to the present Ombudsman Act. I would urge the minister to consider and discuss that, because there is more than one way of dealing with the essence of what is presented here so that these needs could be tied in and the needs of individuals could be met. Would the hon. minister be willing to look at items within this act whereby the concerns of people related to the ombudsman concerns would

be addressed, perhaps by tying them in with the present Ombudsman Act, which is available for us to use?

I'd be interested, if the hon. minister is willing to consider that.... If so, we would know that's forthcoming, and we could be assured that that is not overlooked.

Hon. M. Sihota: On the need for an ombudsman, it should be noted that there is an act that deals with the establishment of the office of the ombudsman. The act allows the ombudsman to look into the affairs of the Ministry of Labour, as the ombudsman has done from time to time. The act also allows the ombudsman to make inquiries of the Industrial Relations Council, as it is now, and it will with regard to the Labour Relations Board in the future. The individual must first exhaust the remedies within this legislation before they can go to the ombudsman, but the hon. member can rest assured that the ombudsman has jurisdiction to take a look at the activities of the Labour Relations Board and the ministry. Therefore I would suspect that he would appreciate that that should provide him with a measure of comfort.

C. Serwa: Speaking on behalf of our Labour critic, the feeling in our caucus is that this section cannot be amended, because it is fundamentally flawed. There is currently an obligation on unions to reply to complaints from their individual members. Apparently this section removes that need for response of a union.

Hon. M. Sihota: Perhaps I can just go back a bit. There are sections that require trade unions to pursue grievance arbitrations because they wish to avoid a fair representation challenge. Consequently, what happens is that grievance arbitrations which really should not be going forward do go forward, and because they do -- and they really shouldn't -- they first of all result in unnecessary cost and expense to both employers and employees. That's a good enough reason to not allow it. Second -- and I think this is an important point -- they also cause a lot of cases that really should not be going through that process to be a part of that process, and that tends to disease the relationship between management and labour. Management gets irritated that cases that clearly shouldn't be there are there, and labour goes through a half-hearted approach in terms of representation because they wish to avoid a fair representation challenge. This clearly is not conducive to good industrial relations, and as I said, it results in additional costs for all parties.

All parties recognize that this was a problem under the previous legislation, and all felt that there had to be a fine-tuning of the balancing of the rights here: on the one hand, the right to make sure that the cases that should be heard are indeed heard, regardless of the cost factor; and on the other hand, the right to make sure that cases that are somewhat borderline or frivolous are not going forward, because they're not conducive to good industrial relations.

The process established in this section provides a fair and expeditious adjudication of fair representation complaints, such that trade union members will be adequately protected and unmeritorious grievances are less likely to be pursued. A number of submissions were made to the special advisers by employers or employer organizations, requesting changes to the administration of this provision to simplify the hearing process and reduce the necessity of employer involvement in disputes between unions and their members. I highlight that point, because the members should know that this was as much a thrust from employers as it was from employees.

[M. Farnworth in the chair.]

It's interesting to note that under the applications for duty of fair representation in the past, we were indeed seeing a considerable number of applications. Let me just bring that information to the attention of the hon. member. For example, in 1987 there were 81 complaints; in 1988, 105 complaints; in 1989, 79 complaints; in 1990, 94 complaints; and in 1991, 102 complaints. That's a lot of complaints, probably in the neighbourhood of 400 to 500 over that five-year period. But the number of orders granted with respect to those complaints were as follows: only 6 out of 81 in 1987; 7 out of 105 in 1988; 3 out of 79 in 1989; 1 out of 94 in 1990; and 4 out of 102 in 1991. So the percentage of the cases that were actually granted, that were deemed to be meritorious at the end of the day, was a fraction of the number of cases that were actually going before the board, and that tends to reinforce the point that I made.

Since there are obviously some cases that are meritorious, it is important that the procedure recognize that. That's why the ***prima facie*** **provisions** which appear in 13(1)(a) are there: to make sure the ones that are meritorious get through. In this way we can reduce some of the workload of the Labour Relations Board, have the cases come forward that ought to come forward, weed out the ones that disease the relationship and provide some cost assistance to all the parties.

I understand the reason that the Social Credit caucus may have difficulty with this provision inasmuch as it varies significantly from previous provisions. But I would hope that the hon. member now understands the reasons why we have chosen to proceed with it.

C. Serwa: I thank the minister for that information. In tendering that, it brings to mind the question of how many of those cases were initiated by a worker, with respect to the union representing that worker. I don't know if the breakdown in statistics divulges that. If it doesn't, it's still a substantial question.

Again, my concern here is with respect to the individual worker and the roadblocks that this section appears to put in front of that worker to develop and meet a lawyer's standard of a ***prima facie*** **case** before the union is required to respond. First of all, that is difficult, because only the union possesses the full information on how it handled the situation which led to the complaint, and it's not available to the worker in this particular case. So if we can focus on this element rather than simply on the employer, we should look at it from the perspective of the worker and the union.

The Chair: The minister.

Hon. M. Sihota: Thank you, hon. Chair. It's a pleasure to see you in the chair.

With regard to the question from the hon. member, all of the applications that I referred to were brought forward by employees. You can see that there are quite a few, but you can also see that quite a few were unmeritorious.

With regard to your comments about ***prima facie*** **evidence**, I don't think you should assume that because all the information is in the possession of the union, as you suggest, that would prevent a ***prima facie*** **determination**. Employees obviously get to put forward a ***prima facie*** **case** as well. I would think that given that these are somewhat employee-driven, the board would look at the ***prima facie*** **evidence** from both sides before it considers whether or not the case discloses such evidence so as to serve a notice of the complaint on the trade union. So I think it does provide the protection that you suggested it wouldn't.

C. Serwa: There seems to be a substantial diversity in standards here, where the union member appears to have roadblocks in front of him or her in this particular section, but those same roadblocks do not exist in the case of the union's position against employers. The union has a much stronger position, and it's not necessary to develop the same degree of a ***prima facie*** **case**. In our opinion, it indeed shows a substantial amount of bias toward the central agency or the central control of the union body.

Hon. M. Sihota: Perhaps I didn't make it clear enough. If you read 13(1), it says: "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." In other words, it's not for a trade union to make the ***prima facie*** **case**; it's for an employee to make that case. Secondly, once that case is presented, then it causes the board to investigate. Thirdly, once the investigation has commenced, then their determination is made as to whether or not there should be a hearing.

That is preferable to the current situation where there is no ***prima facie*** **opportunity** to make the case, so as to weed out the cases. Secondly, it means that an employee, under the current situation, would have to make their case without the benefit of a preliminary investigation and in front of the whole board as if it was a full hearing, with all the attendant costs. This actually assists employees, from that perspective, with regard to this provision.

L. Stephens: If the employees who may be putting forward this ***prima facie*** **case** are not skilled or have difficulty, would the minister provide counselling or assistance, as is done at Workers' Compensation?

Hon. M. Sihota: They are assisted, hon. member, by an investigating officer appointed by the board.

F. Gingell: I must admit that I didn't see anything in section 13 about an investigating officer. Is that a requirement set out by the regulations? Or is it in some other portion of the act?

Hon. M. Sihota: I refer the hon. member to section 14. I guess this is my frustration with the opposition. They don't always seem to do their research. Section 14 deals with the opportunity of the board to appoint an officer to inquire into a complaint. So if you read 14, you'll see that there's assistance provided.

F. Gingell: I'm just fascinated by this. The minister couldn't respond to the question until he had been advised by his assistant. I find your remark most uncalled for. You had to respond. You had to get advice. Anybody watching this House on Hansard television would see, hon. minister, that you have your own standards for your own behaviour and different standards for other people.

Hon. M. Sihota: That's a point of debate, but you're wrong. I'll tell you something else, hon. member, if you want to get into that kind of stuff. I've sat here for four days presenting example after example where your caucus has been able to do the necessary research. I've listened to your Labour critic suggest in this House directly that his research staff have been in frequent contact with the B.C. Federation of Labour.

G. Farrell-Collins: Point of order. The member has already stated that he is bringing a point of privilege in that regard before this House. He's trying to go around the rules of this House to bring up his petty little concerns. He's acting very much the same way he did with the Kelowna Chamber of Commerce when they were here, when they called him rude.

The Chair: We are on section 13. I would ask all members to be relevant to that section.

Hon. M. Sihota: To make it clear, there's a section that deals with the procedure for fair representation complaints. It sets out a procedure that the most simple-minded people in British Columbia can read. It seems to me that the opposition cannot take the time to read one section and compare it to the next in order to come to an understanding of what's contained in the legislation. It has demonstrated over and over again it is one of the most ineffective and inept oppositions in the history of this province.

G. Farrell-Collins: Point of order. The minister is clearly not relevant to the debate. If his opposition had been a little more effective, we wouldn't have had the type of government we had last time.

The Chair: Please, hon. member, address your remarks through the Chair.

G. Farrell-Collins: If the Chair was fair, we'd be glad to.

The Chair: The rulings of the Chair are not subject to debate -- standing order 9.

F. Gingell: Perhaps the minister could advise me on a very simple question, which I'm sorry I don't know the answer to. Would the panel that would be set up be a child of the board? Or does it consist of board members? Would it only consist of board members? Or would the board be authorized and empowered to appoint the panel from non-board members?

Hon. M. Sihota: It's a panel of board members.

K. Jones: I rise on a point of order. There doesn't appear to be a quorum in the House.

The Chair: Will the House come to order. There appears to be a quorum now.

Section 13 approved.

March 27, 2018

Submission by Chris Budgell to the B.C.

Labour Relations Code Review

LRCReview@gov.bc.ca

Attn: Michael Fleming (Chair)

Sandra Banister (Member)

Barry Dong (Member)

I am a former member of CUPE Local 15. The interests of the union leadership and employer communities are being well represented by other written submissions and presentations in the meetings scheduled in March and April 2018. I see my role as speaking for the public interest as well as the interests of rank-and-file union members.

Having learned about the submission process the day after acceptance of submissions was closed, I've not had the time I would have liked to prepare an optimal submission. This may however benefit from being shorter than it might have otherwise been.

The two issues with the Labour Code that I want to address in this submission are:

1) The Duty of Fair Representation - and Section 13

The first (and perhaps more interesting) one is regarding section 13, that was a unique statutory provision when enacted in 1992. If I were the current minister of labour I would have already moved to have section 13 repealed, so that is something I am recommending, however the problems of which section 13 is part require a more comprehensive solution. Key to that comprehensive solution is removing responsibility for oversight of the "duty of fair representation (DFR)" from the Labour Relations Board. I think we have too many administrative justice agencies already, but I cannot see a way to avoid creating another agency specifically to handle this responsibility.

2) The Grievance Arbitration Regime

I have had the experience of being the subject of a grievance arbitration that was conducted over two successive days in rooms rented from two different hotels in downtown Vancouver. (I mention the fact that we reconvened at a different hotel for the second day because I view it as part of the evidence that the arbitration wasn't well planned.) The arrangements for these proceedings are entirely in the hands of the employers and unions. The Labour Board routinely cites that fact. There's an array of problems with the regime and all of them impact the grievors, not the two "parties". One of them is that the grievors have no representation either in the preparation for or in the conduct of the hearings. The Law Society of B.C. dismissed a complaint I filed about the conduct of one of its members relying solely on the observation that the union's lawyer with whom I'd been forced to deal (but who then refused to even attend the hearing) was not obliged to represent my interests, but rather those of the union. The grievor and the union are not the same entity, and it cannot be denied that there is potential that their interests will conflict.

I suggest that the manner in which these proceedings are run, including routinely using hotel rooms and never recording the proceedings, is archaic. This is the 21st Century. We must, and we can, do much better.

There is abundant evidence that the labour relations / labour law communities remain committed to preserving the existing system. Former Ontario Chief Justice Warren Winkler has provided some of that evidence in speeches dating from 2010 and 2011 found at these two links:

http://irc.queensu.ca/sites/default/files/articles/dwls-2010-warren-k-winkler-labour-arbitration-and-conflict-resolution-back-to-our-roots.pdf

http://www.ontariocourts.ca/coa/en/ps/speeches/2011-arbitration-cornerstone-industrial-justice.htm

If his perspective has any merit, then it's reasonable to ask what has been accomplished to address his concerns in the six or seven years since he gave those speeches.

The solution must include giving grievors a real voice in the arbitration process.

The Duty of Fair Representation - and Section 13

It isn't necessary for me to recount here the history of the Duty of Fair Representation. However, I'll note that legal recognition of the duty in Canada preceded assigning, by statute, oversight of the duty to any labour boards. It existed as a "common law" duty and there is a notable case on record that was decided by the BCSC: Fisher v. Pemberton. I believe that consideration should be given to altering the Code so that recourse to the courts is again available if someone prefers to take that route. That might encourage whatever agency has oversight of the statutory duty to ensure that it offers an option that is at least as attractive.

Section 13 was and remains a unique statutory provision. The record seems to indicate that it was conceived and drafted by three consultants retained by the new NDP government following the election in 1991. Two of them were labour lawyers and one was a well-known figure in the labour relations community. The debate in the House on November 26, 1992 is very revealing. The Hansard record is found at https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/1st-session/19921126pm-Hansard-v6n24, and at this link - http://www.uncharted.ca/images/users/ssigurdur/hansard_on_sect_13_2.pdf - is found the copy of the debate that I extracted with the "*prima facie*" terms highlighted.

Those hybrid Latin / English terms are ones the vast majority of people have never had cause to use and whose meanings they would not know. I encountered "*prima facie* case" for the first time when I initially approached the Labour Relations Board. I don't recall that I initially questioned what it was supposed to mean and I was not informed that it had been used expressly in the section 13 debated in 1992. It was no longer in that section in the year (2000) I approached the Board. Eventually I discovered that it had been used expressly in the provision (twice in two successive lines). The provision as debated isn't recited in the Hansard record, but it was subsequently accurately recited in Labour Board decision B156/1994 found at this link - http://www.lrb.bc.ca/decisions/B156$1994.pdf.

That the provision had been vigorously debated with notable reliance on that term by the MLA's and that subsequently the term had been removed from the provision motivated me to make inquiries about the meaning of the term and the means by which it had been removed. I had no prior knowledge of legislative processes, but I learned that the Legislature has exclusive power to enact, amend, and repeal statutes and individual statute provisions. I also ascertained that the B.C. Legislature had never revisited section 13 after 1992. Further inquiry revealed that the change became effective following the "statute revision" exercise that resulted in the designation "RSBC 1996", and that there is essentially no publicly accessible record of the revision process, which was conducted by a branch of the Ministry of Attorney General called the Legislative Counsel Office.

On the related inquiry about the meaning of "*prima facie* case" I was eventually fortuitously directed by a comment in a legal blog (still found here - http://www.thecourt.ca/omalley-the-prima-facie-test/) to an important source: the first edition of The Law of Evidence in Canada, that was published in 1992, the same year section 13 was debated. In that edition the relevant section begins on page 65 and ends on page 73. The final paragraph begins, "*The terms "prima facie evidence", "prima facie proof", and "prima facie case" are meaningless unless the writer explains the sense in which the terms are used.*" And it concludes with "*. . . these phrases are superfluous and, as the decisions of the Supreme Court clearly demonstrate, their use is dangerous.*".

In 1998, a year or less after the formal completion of the statute revision exercise, the labour law community made use of another opportunity to amend section 13. This time four consultants delivered to the Minister of Labour a report that included a draft of a considerably longer section 13 (most notably adding mediation steps to the process). The recommendation was that this amendment would be presented to the Legislature. I've found no record of any government response to this recommendation. It wasn't presented to the Legislature.

In 2002 I challenged the Labour Board's application of section 13 in a judicial review heard by the B.C. Supreme Court. In the result - https://www.canlii.org/en/bc/bcsc/doc/2003/2003bcsc119/2003bcsc119.html - delivered in January 2003 I prevailed. Despite the fact that the term "*prima facie* case" was not then in section 13 it was cited - though just once - in the judgment (at paragraph 38).

Within a month of the release of that judgment the Labour Board issued as decision B63/2003 - http://www.lrb.bc.ca/decisions/B063$2003.pdf - what appeared to be a response to that result. B63/2003 makes no mention of my case and it decides nothing at all about the case it does name. It does though accurately recite - at paragraph 8 - section 13 as amended. This version can be compared to the one recited in the 1994 decision. The Chair, who signed the 2003 decision, had also signed (then as a Vice Chair) the 1994 decision. While this confirms the removal of the two instances of "*prima facie* case" from section 13, B63/2003 does refer expressly to the term in paragraph 99. There the Board claims that the absence of the term from section 13 reflects the express intent of the Legislature to create a standard distinct from the purported "*prima facie*" standard.

The CanLII database currently reports that the B63/2003 policy statement has now been cited by the Board in 700 subsequent decisions.

It should be apparent from that short discussion that a great deal more could be said about this matter. I will conclude what I have to say about it at this point by referring the committee and other readers to a previous section 3 committee report - https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/employers/additional-labour-resources/03_april_lrc_review.pdf - to read what it had to say about the duty of fair representation and B63/2003, also referred to simply as *Judd*.

From:
To: LRC Review LBR:EX
Subject: A submission to the 2024 Labour Relations Code Review panel
Date: March 8, 2024 3:07:06 PM
Attachments: Hansard on section 13 19921126.pdf

Dear panel members,

My education about B.C's labour law regime began in the year 2000 with a labour arbitration and then the first of several applications to the Labour Relations Board.

Many people have since heard from me. After BC's Court of Appeal issued a judgment in late 2003 that overturned the result the Supreme Court had issued in my favour in January of that year my efforts took an unanticipated but productive turn beginning with a question about why there were two versions of LRC section 13. I was able to trace the chronology of what happened to section 13, starting with the curious debate in the legislature of November 26, 1992.

I concluded that the changes made to section 13 - to remove the two instances of "*prima facie* case" - were effected illegally. There has been a marked reluctance on the part of everyone I have put this to, to even acknowledge that section 13 was changed. My education about this matter included learning about the mechanism called "statute revision", of which the wider public is unaware and regarding which I suspect there is little awareness among our elected legislators.

I am attaching the copy I made of the debate (taken from the Hansard record of November 26, 1992) with some highlighting added on the two pages before the last one. Imagine if, in 1992, when our legislators were debating section 13, they had been told that subsequently its language would be changed without consulting with them.

There hasn't been another revision of the full statute book since the one formally completed in the spring of 1997, resulting in the designation RSBC 1996. The Ministry of Attorney General's Legislative Counsel Office enjoyed a mandate to undertake that project with no oversight from anyone else, and the records created during the course of that process, which were evidently then archived, have never been seen by anyone else.

I turned to the Office of the Information and Privacy Commissioner seeking access to those documents, with this result that cites some sort of legal privilege, and in doing so implicitly says that the statute book belongs to the Crown.

Part of the chronology I put together is this report tendered to the Minister of Labour less than a year after the formal completion of the statute revision exercise. Of the four people who signed it, one had, with two other people, drafted the version of section 13 put to the legislature in 1992. The government declined to proceed with the recommendation found on

PDF pages 73 and 74 of 110. That left in place the version I say was illegally amended.

The substance of what I uncovered, and my confidence that I've reached the right conclusions, ensure that I will continue to pursue these matters.

I am sharing with you below what I shared yesterday with one particular MLA and then another one who is a current member of cabinet.

Separate from these issues there is another one in the fact that labour arbitrations are conducted as private affairs, though it is now well enough understood - at least within the labour arbitration community - that they should be subject to the open court principle. I invite you to see if you can find anyone who will say otherwise.

I will attend your first public meeting in Vancouver, and I ask that you put me on your list of speakers, as early in the day as possible.

Sincerely,

Chris Budgell

The full story of what I uncovered and what I went through in discovering it is too long to put in an email that I would expect anyone to read. But I am able to offer a fairly succinct version that covers a lot of ground .

My involvement began in the year 2000, but the story started in November 1992, about a year or so after the election that resulted in a previous NDP government led by Mike Harcourt. I think we haven't seen the final word on what then happened through the 1990's leading to the NDP securing just two seats in another election.

What I uncovered is about a curious and very consequential series of mistakes that the media has never spoken about.

Three individuals were commissioned to oversee the creation of a new Labour Relations Code. It appears that they drafted at least some of it themselves. I'm concerned primarily with just one provision, which became section 13, the wording of which is found here. That was what the legislature debated during the afternoon sitting of November 26, 1992 (as recorded here), before approving it for enactment.

I'm not certain when exactly the Labour Relations Board began applying section 13, because for a while they continued dealing with complaints filed when the Industrial Relations Act was still in effect. But there is one decision rendered in 1994 of particular interest to me because it accurately recited section 13 - the "***Terry Norris***" reconsideration decision, BCLRB No. B156/94. It is well worth reading all of it, for a number of reasons, one being that Brent Mullin, one of the three Vice Chairs who signed it, returned to the Board as the Chair after the election that reduced the NDP to two seats. In February 2003 Chairman Mullin wrote the only other LRB decision that, two my knowledge, has recited section 13. It wasn't however the same section 13 recited in the 1994 decision. That decision - the "***James W.D. Judd***"

decision, BCLRB No. B63/2003, was a response to my unprecedented success in a BC Supreme Court decision issued less than a month previously, after I had faced, without counsel of my own, counsel for the LRB and two other parties.

The difference between the two versions was the removal of the two instances, in two successive lines, of "*prima facie* case", which required the substitution of some different words. I perceive in the *Terry Norris* reconsideration decision the inspiration for that change.

If any of the people who were involved in what took place were compelled to give an explanation, they might claim that the changes effected were simply "clarifying" the intent of the legislature. But in the face of repeated challenges from me, no one has ever made that claim. Brent Mullin himself said something else - in paragraph 99 of *Judd*:

Despite the Board's existing statutory ability to dismiss any complaint or application at any time for failure to make out a *prima facie* case (Section 133(4)), the Legislature has set a special mandatory threshold for Section 12 complaints. It has established a minimum that must be done before respondents are put to the difficulty and expense of being engaged in litigation. The Legislature has in fact emphasized the requirement of sufficient evidence of an apparent contravention at two points in the Section 13 process for Section 12 complaints. That legislative policy should be given effect.

That says that the difference between "*prima facie* case" and the substituted words is substantive and thus was an amendment, requiring the active involvement of the legislature. But there was no such involvement. The Ministry of Attorney General's Legislative Counsel Office was prevailed upon by parties outside of government (I have reason to believe that the Canadian Bar Association was involved) to effect those changes in the course of a statute revision exercise that had been commenced in 1990 and that on completion in the spring of 1997 resulted in the designation RSBC 1996.

You have at your command all the resources needed to verify my account of what happened. What I've just related isn't the full story. There is quite a lot more.

Since 2003 the BCLRB has cited the *Judd* decision over 1000 times in dismissing other complaints. That record can be followed with this query to CanLII.

One of my views is that legislators are in desperate need of education about language. It is often said that in legislation every word counts. I doubt that anyone could cite better proof of that self-evident statement than what I uncovered.

The use of legal Latin and of mixed Latin and English remains problematic. I wouldn't claim that all of those instances must be eliminated. But "*prima facie* case", which I'm sure you've heard used in the legislature, is uniquely problematic.

Years after I had figured out the truth for myself I came across this curious blog post, which alludes to the authoritative text, The Law of Evidence in Canada, first published in 1992. I accessed a copy at the courthouse library.

Regards,

Chris Budgell

1992 Legislative Session: 1st Session, 35th Parliament

HANSARD

THURSDAY, NOVEMBER 26, 1992

Afternoon Sitting

Volume 6, Number 24

http://leg.bc.ca/hansard/35th1st/h1126pm.htm

On section 13.

V. Anderson: As we look at section 13, which is procedure for fair representation of complaint, we notice that in the previous sections of this bill the minister was attempting to present a new approach and a new understanding. He has attempted to say, particularly in relation to natural justice, that they were creating a new awareness of possibilities for people to receive the justice that they deserve. In this particular section they have put forward some protections -- and I emphasize some -- for individuals in the workplace from the trade union and from their employers. However, the protections that they have put forward are only against the actions that are covered by the code itself.

As we know, in many actions that take place in our lives, the technical or legal regulations are not always the main problem. The main problem may be one of misunderstanding, of different jurisdictions or of communication.

In other areas this Legislature has seen fit to create the position of the ombudsman, so that when the regular systems break down and communication is not adequate to look at the root causes of the difficulty, there is the opportunity for this to met and countered.

There are many difficulties that people face in dealing with situations -- not only difficulties with the employer or with the decisions or actions of the union, but also difficulties with the actions of the labour board itself, the ministry or the departments of government.

These actions leave the individual unable to cope, because most employees are not in the position financially, physically or emotionally to take on whatever system happens to be turned against them, even if that system has turned against them by accident and not by design. It's very difficult for an individual who is cut off and has the feeling of being ostracized to begin to put forth the opportunities they need.

There needs to be in place some kind of opportunity for people to have their voices heard, to express themselves and to get others to join them. They need to find someone who will stand on their behalf as their advocate and make sure that the circumstances are looked at from all sides and all positions and are dealt with fairly, so they can be heard and feel that their needs have been considered.

We realize that in the code that this is attempting to replace, there was the opportunity -- although not proclaimed -- for the ombudsman position. I'm sure the fact that it was in the act had a detrimental effect, because people were aware of something they could have called on. Even in the explanations of that position, the concerns and items that needed to be taken into consideration were clearly described. In the activities of the Labour Relations Board itself, they would know that these conditions were there. They would be able to take these positions into account in their considerations, and they would be able to operate as if they were there and these positions were in place. The very fact that this opportunity was there and could have been proclaimed when the need arose was a very important position.

It is important that we express to the people of this province and the individual worker, however humble or great their position might be, that there is an opportunity for their positions to be heard, clarified and fairly dealt with. As we have seen in this particular act thus far, there are difficulties in the definitions. We have seen difficulties in the purpose of this act and each of the clauses we have dealt with in some detail; there is a lack of clarity as to the well-being of employees, particularly within whatever system they may work.

It is important that we take the concerns of these people seriously. As I indicated earlier in this discussion, the individuals who came into my constituency office and who I came to know in their circumstances even prior to becoming a member of the Legislative Assembly were those people who had gone through the system that was available to them. They had tried to deal with the appeals that were put before them and found that they got caught up in the bureaucracy. Because of the bureaucracy, not necessarily the evil intent of any person, there was no hope for them to resolve their circumstances. Not only was this a crisis in the individual person's life, but it became a crisis in their family life for their children, spouse and all who were closely related to them. It became a crisis within the community itself, for many lost their employment opportunities and their self-confidence, and many were forced into the other government support system when they should have been given the opportunity to clarify their situation and renew their lives.

In this act there must be an opportunity for these people to come through whatever difficult circumstances they find themselves in and have an opportunity and a channel by which they can proceed after a breakdown in employment, after a confrontation with the union, the employer, the Labour Board or the government to find a way to bring the pieces back together again. They must have some kind of help available to them in those circumstances. It seems to me that unless we put that kind of concern, thoughtfulness and opportunity into place, we are simply dealing with rules and regulations, not with the lives of people. It's the lives of these people that we must be concerned about, and who this bill is here to serve -- not that people must be dictated to or have to conform to the laws within the bill itself.

Naturally the laws need to be legal, and we have to take them into account. But when we discover in actual circumstances that the laws or the regulations are unjust, and when the people who enforce the regulations admit that what they're doing is not for the well-being of the people for whom they are doing it, they have no choice, because that's what the regulations say.

Time and time again, hon. Chair, in dealing with the social services system, people have been unable to get their needs met and have come to the point of a tribunal. In the tribunal they have sat down with the representative of the government and with their own advocate, and they have looked at the picture in total framework. Time and time again the representatives of the government have had to say that not only do we have to act upon this law, but we have to act upon the interpretation of the law -- namely, the regulations that have been passed down to us. Time and time again in that tribunal all three members -- the representative of the government, the representative of the individual and the neutral chair -- have read the act for themselves and have discovered that the regulations by which the workers were to operate in that circumstance did not meet the needs, and the act itself begged to be interpreted much differently. Time and time again the very actions, which technically were decided upon according to the regulations and the rules when they were reviewed in the common sense of an interrelated dialogue to look at all the issues in question, were overturned. Those judgments were upheld, and they received the compensation and the justice they deserved.

That kind of opportunity is not given here in "Procedure for fair representation complaint." The material that follows does not cover the circumstances that need to be covered. They cover in part what relates to trade union actions or employers' actions; but they do not cover the actions of the labour board itself and its decisions, nor do they cover the actions of the bureaucracy of the ministry in which they are so often caught.

Therefore, hon. Chair, I would like to make an amendment to section 13, by the addition of the following subsection (3):

"The Lieutenant-Governor-in-Council shall appoint a person to be called the labour ombudsman, who shall hold office during good behaviour for a term of five years, and for additional terms the Lieutenant-Governor-in-Council appoints, and be paid the remuneration the Lieutenant-Governor-in-Council determines."

Hon. Chair, there's an extra copy for the hon. minister, if he would wish to receive it.

"13(4) The labour ombudsman has the power to investigate any decision or recommendation made, or act done or omitted, relating to a matter of administration, including the merits of a policy, and affecting any person, by (a) any board, commission, council or other tribunal under this act or any other act administered by the minister, or any branch or agency of the Ministry of Labour...."

The Chair: I should have advised the member that under standing orders his time has expired. Would the member please take his seat.

Hon. M. Sihota: Hon. Chair, I have no difficulty with the hon. member making the amendment. I'll speak to it in a second whether it's in order or not. There's certainly no need for him to read it. We do have a copy of it now. It goes on for some five pages, I believe. I don't think it's necessary to have it read if it's filed. I'd like to raise a procedural issue, but....

An Hon. Member: He has the right to read it.

The Chair: Hon. member, it is customary to table your amendment -- and the member is permitted to make a statement. The minister indicated that he is prepared to accept the amendment without a decision with respect to it being in order or not. There has been intervening debate. This would allow the member to continue if he would like to speak to his amendment.

V. Anderson: This particular amendment is very similar to that which has been a possibility in the last two labour bills in this province. I believe it was originally introduced in the labour bill presented by the then NDP government in 1973. Some of the comments that were made about it at that time are particularly appropriate. I quote from Hansard on the validity of this particular amendment.

Hon. M. Sihota: Point of order. Before we get into an extensive speech on the amendment, perhaps it would be appropriate for the Chair to determine whether or not the amendment is in order. I would at least like to have the opportunity to put to the Chair the argument that it is not in order.

Section 13 lays out a procedure with respect to complaints made under the provisions of section 12. It does not deal with any matter that in any way relates to complaints about the Labour Relations Board or the ministry. The purpose of the amendment goes far beyond the scope of section 13. It is not relevant or tied in with section 13. It deals with a new topic. The bill has been debated in principle already. At that time I believe the hon. member did raise this issue. But from a procedural point of view I cannot see how it has any relevance to the duty-of-fair-representation provisions as they are contained in the findings made by the board. This goes beyond the duty of fair representation and talks about the powers of the ombudsman to review the legislation. "The ministry, any board, council or other tribunal that is established under this act, any act administered by the ministry, any branch or agency of the Ministry of Labour, or any officer, employer or member thereof...." So it goes well beyond the scope of this section, and I would argue that it's not relevant.

The Chair: Thank you, hon. minister.

Hon. member, under your section 13(3) you make reference to the need for an ombudsman. Of course, as all members know, any matter that involves an expenditure by the Crown has to come in the form of a message from the Lieutenant-Governor. On that point alone the amendment would not stand the test of being in order, and I would so rule that it is out of order.

G. Farrell-Collins: It's perhaps unfortunate, I guess, that there wasn't some provision made in the bill for that type of representation. I think the words of the member for Vancouver-Langara were very wise and appropriate. All I can say is that it is unfortunate that there is not a provision somewhere in section 13 for that type of amendment, but so be it. That's the government's choice, I guess. We've raised our opposition and proposed our amendment.

V. Anderson: Hon. Chair, I appreciate your ruling and understand your particular reason for that ruling. But I would also urge the minister to reconsider, not the ruling of the Chair but the need for this kind of provision. I would urge that this kind of provision be made available as the act proceeds, because it could be made not in the fashion that it was presented here but simply by moving to add the concerns related here to the present Ombudsman Act. I would urge the minister to consider and discuss that, because there is more than one way of dealing with the essence of what is presented here so that these needs could be tied in and the needs of individuals could be met. Would the hon. minister be willing to look at items within this act whereby the concerns of people related to the ombudsman concerns would

be addressed, perhaps by tying them in with the present Ombudsman Act, which is available for us to use?

I'd be interested, if the hon. minister is willing to consider that.... If so, we would know that's forthcoming, and we could be assured that that is not overlooked.

Hon. M. Sihota: On the need for an ombudsman, it should be noted that there is an act that deals with the establishment of the office of the ombudsman. The act allows the ombudsman to look into the affairs of the Ministry of Labour, as the ombudsman has done from time to time. The act also allows the ombudsman to make inquiries of the Industrial Relations Council, as it is now, and it will with regard to the Labour Relations Board in the future. The individual must first exhaust the remedies within this legislation before they can go to the ombudsman, but the hon. member can rest assured that the ombudsman has jurisdiction to take a look at the activities of the Labour Relations Board and the ministry. Therefore I would suspect that he would appreciate that that should provide him with a measure of comfort.

C. Serwa: Speaking on behalf of our Labour critic, the feeling in our caucus is that this section cannot be amended, because it is fundamentally flawed. There is currently an obligation on unions to reply to complaints from their individual members. Apparently this section removes that need for response of a union.

Hon. M. Sihota: Perhaps I can just go back a bit. There are sections that require trade unions to pursue grievance arbitrations because they wish to avoid a fair representation challenge. Consequently, what happens is that grievance arbitrations which really should not be going forward do go forward, and because they do -- and they really shouldn't -- they first of all result in unnecessary cost and expense to both employers and employees. That's a good enough reason to not allow it. Second -- and I think this is an important point -- they also cause a lot of cases that really should not be going through that process to be a part of that process, and that tends to disease the relationship between management and labour. Management gets irritated that cases that clearly shouldn't be there are there, and labour goes through a half-hearted approach in terms of representation because they wish to avoid a fair representation challenge. This clearly is not conducive to good industrial relations, and as I said, it results in additional costs for all parties.

All parties recognize that this was a problem under the previous legislation, and all felt that there had to be a fine-tuning of the balancing of the rights here: on the one hand, the right to make sure that the cases that should be heard are indeed heard, regardless of the cost factor; and on the other hand, the right to make sure that cases that are somewhat borderline or frivolous are not going forward, because they're not conducive to good industrial relations.

The process established in this section provides a fair and expeditious adjudication of fair representation complaints, such that trade union members will be adequately protected and unmeritorious grievances are less likely to be pursued. A number of submissions were made to the special advisers by employers or employer organizations, requesting changes to the administration of this provision to simplify the hearing process and reduce the necessity of employer involvement in disputes between unions and their members. I highlight that point, because the members should know that this was as much a thrust from employers as it was from employees.

[M. Farnworth in the chair.]

It's interesting to note that under the applications for duty of fair representation in the past, we were indeed seeing a considerable number of applications. Let me just bring that information to the attention of the hon. member. For example, in 1987 there were 81 complaints; in 1988, 105 complaints; in 1989, 79 complaints; in 1990, 94 complaints; and in 1991, 102 complaints. That's a lot of complaints, probably in the neighbourhood of 400 to 500 over that five-year period. But the number of orders granted with respect to those complaints were as follows: only 6 out of 81 in 1987; 7 out of 105 in 1988; 3 out of 79 in 1989; 1 out of 94 in 1990; and 4 out of 102 in 1991. So the percentage of the cases that were actually granted, that were deemed to be meritorious at the end of the day, was a fraction of the number of cases that were actually going before the board, and that tends to reinforce the point that I made.

Since there are obviously some cases that are meritorious, it is important that the procedure recognize that. That's why the ***prima facie*** **provisions** which appear in 13(1)(a) are there: to make sure the ones that are meritorious get through. In this way we can reduce some of the workload of the Labour Relations Board, have the cases come forward that ought to come forward, weed out the ones that disease the relationship and provide some cost assistance to all the parties.

I understand the reason that the Social Credit caucus may have difficulty with this provision inasmuch as it varies significantly from previous provisions. But I would hope that the hon. member now understands the reasons why we have chosen to proceed with it.

C. Serwa: I thank the minister for that information. In tendering that, it brings to mind the question of how many of those cases were initiated by a worker, with respect to the union representing that worker. I don't know if the breakdown in statistics divulges that. If it doesn't, it's still a substantial question.

Again, my concern here is with respect to the individual worker and the roadblocks that this section appears to put in front of that worker to develop and meet a lawyer's standard of a ***prima facie*** **case** before the union is required to respond. First of all, that is difficult, because only the union possesses the full information on how it handled the situation which led to the complaint, and it's not available to the worker in this particular case. So if we can focus on this element rather than simply on the employer, we should look at it from the perspective of the worker and the union.

The Chair: The minister.

Hon. M. Sihota: Thank you, hon. Chair. It's a pleasure to see you in the chair.

With regard to the question from the hon. member, all of the applications that I referred to were brought forward by employees. You can see that there are quite a few, but you can also see that quite a few were unmeritorious.

With regard to your comments about ***prima facie*** **evidence**, I don't think you should assume that because all the information is in the possession of the union, as you suggest, that would prevent a ***prima facie*** **determination**. Employees obviously get to put forward a ***prima facie*** **case** as well. I would think that given that these are somewhat employee-driven, the board would look at the ***prima facie*** **evidence** from both sides before it considers whether or not the case discloses such evidence so as to serve a notice of the complaint on the trade union. So I think it does provide the protection that you suggested it wouldn't.

C. Serwa: There seems to be a substantial diversity in standards here, where the union member appears to have roadblocks in front of him or her in this particular section, but those same roadblocks do not exist in the case of the union's position against employers. The union has a much stronger position, and it's not necessary to develop the same degree of a ***prima facie*** **case**. In our opinion, it indeed shows a substantial amount of bias toward the central agency or the central control of the union body.

Hon. M. Sihota: Perhaps I didn't make it clear enough. If you read 13(1), it says: "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." In other words, it's not for a trade union to make the ***prima facie*** **case**; it's for an employee to make that case. Secondly, once that case is presented, then it causes the board to investigate. Thirdly, once the investigation has commenced, then their determination is made as to whether or not there should be a hearing.

That is preferable to the current situation where there is no ***prima facie*** **opportunity** to make the case, so as to weed out the cases. Secondly, it means that an employee, under the current situation, would have to make their case without the benefit of a preliminary investigation and in front of the whole board as if it was a full hearing, with all the attendant costs. This actually assists employees, from that perspective, with regard to this provision.

L. Stephens: If the employees who may be putting forward this ***prima facie*** **case** are not skilled or have difficulty, would the minister provide counselling or assistance, as is done at Workers' Compensation?

Hon. M. Sihota: They are assisted, hon. member, by an investigating officer appointed by the board.

F. Gingell: I must admit that I didn't see anything in section 13 about an investigating officer. Is that a requirement set out by the regulations? Or is it in some other portion of the act?

Hon. M. Sihota: I refer the hon. member to section 14. I guess this is my frustration with the opposition. They don't always seem to do their research. Section 14 deals with the opportunity of the board to appoint an officer to inquire into a complaint. So if you read 14, you'll see that there's assistance provided.

F. Gingell: I'm just fascinated by this. The minister couldn't respond to the question until he had been advised by his assistant. I find your remark most uncalled for. You had to respond. You had to get advice. Anybody watching this House on Hansard television would see, hon. minister, that you have your own standards for your own behaviour and different standards for other people.

Hon. M. Sihota: That's a point of debate, but you're wrong. I'll tell you something else, hon. member, if you want to get into that kind of stuff. I've sat here for four days presenting example after example where your caucus has been able to do the necessary research. I've listened to your Labour critic suggest in this House directly that his research staff have been in frequent contact with the B.C. Federation of Labour.

G. Farrell-Collins: Point of order. The member has already stated that he is bringing a point of privilege in that regard before this House. He's trying to go around the rules of this House to bring up his petty little concerns. He's acting very much the same way he did with the Kelowna Chamber of Commerce when they were here, when they called him rude.

The Chair: We are on section 13. I would ask all members to be relevant to that section.

Hon. M. Sihota: To make it clear, there's a section that deals with the procedure for fair representation complaints. It sets out a procedure that the most simple-minded people in British Columbia can read. It seems to me that the opposition cannot take the time to read one section and compare it to the next in order to come to an understanding of what's contained in the legislation. It has demonstrated over and over again it is one of the most ineffective and inept oppositions in the history of this province.

G. Farrell-Collins: Point of order. The minister is clearly not relevant to the debate. If his opposition had been a little more effective, we wouldn't have had the type of government we had last time.

The Chair: Please, hon. member, address your remarks through the Chair.

G. Farrell-Collins: If the Chair was fair, we'd be glad to.

The Chair: The rulings of the Chair are not subject to debate -- standing order 9.

F. Gingell: Perhaps the minister could advise me on a very simple question, which I'm sorry I don't know the answer to. Would the panel that would be set up be a child of the board? Or does it consist of board members? Would it only consist of board members? Or would the board be authorized and empowered to appoint the panel from non-board members?

Hon. M. Sihota: It's a panel of board members.

K. Jones: I rise on a point of order. There doesn't appear to be a quorum in the House.

The Chair: Will the House come to order. There appears to be a quorum now.

Section 13 approved.

From:
To: LRC Review LBR:EX
Subject: A submission to the 2024 Labour Relations Code Review
Date: March 22, 2024 2:03:34 PM
Attachments: 20140926 Ltr to BCSC CJ & ACJ re Case Assgnmnt.pdf
20141014 Gropper J Sealed Oral Ruling.pdf
20141010 Ltr reply from BCSC re Case Assignment.pdf
Hansard on section 13 19921126.pdf

I received a reply from you yesterday acknowledging my request to attend the first public meeting in Vancouver.

It's not clear to me if you are asking us to provide something like a verbatim version of what we would say to the panel if we seek and are granted an opportunity to speak. I might wish to address the panel but would do so very briefly.

My focus is in one sense a very broad one: access to justice, which I was denied throughout a very long journey that included multiple engagements with the BCLRB. I long ago realized that I was not alone, but also that I might have a unique opportunity.

What I am now sharing with you below and in four attached PDF files illustrates why I think I may have a unique opportunity.

I strongly suggest that the panel members should read all of this.

The BCLRB in particular has problems it cannot resolve. It is relying on citations of the "*Judd*" so-called decision, so-called because it decided nothing, but was rather just a policy statement and instruction to all the other Vice Chairs. Read paragraph 99. Study it. It is a bald lie.

Judd was written in response to my January 2003 success in court.

The legislature debated "*prima facie* case" on November 26, 1992. I doubt that even Moe Sihota was aware of the truth about that term. Subsequently the Legislative Counsel Office used the statute revision exercise it had commenced in 1990 to remove the two instances of that term. That was an amendment, not a mere cosmetic change. It was therefore an amendment effected illegally. Who prevailed on the LCO to do that? I have reason to suspect the B.C. branch of the CBA that enjoyed a privileged and confidential relationship with the LCO.

In this report, tendered in 1998, there was a clumsy attempt at a cover up - at PDF pages 73 and 74 of 110. Vince Ready, along with John Baigent and Tom Roper, had drafted the section 13 that the legislature had debated. The government did not go forward with that 1998 recommendation, so the BCLRB is citing the section 13 that is the result of an amendment effected illegally.

Having found that report and recognized the purpose of that recommendation I named Justice

Miriam Gropper in a complaint to the Canadian Judicial Council in 2010. Then I found myself in front of her in 2012, prompting a second complaint.

I'm attaching what she produced as a result if our next meeting - in a closed courtroom - in 2014, along with my letter to the court and the reply that I found in my mailbox on returning from the courthouse.

Sincerely,

Chris Budgell

---------- Forwarded message ---------
From: **Chris Budgell** >
Date: Fri, 22 Mar 2024 at 13:20
Subject: Re: A response to what Chief Justice Deborah Smith said to the Canadian Lawyer Magazine
To: Access to Justice BC <contact@accesstojusticebc.ca>
Cc: Jennifer Leitch

Dear Tina,

There is no point in stating that A2JBC is one of the organizations that does not provide "legal advice", certainly not to me. I am well aware that legal advice is available only when there is a "solicitor-client" relationship, a luxury that is denied to most people.

A2JBC should be tackling that issue and it isn't doing so. No one in the legal establishment is.

I don't know what you mean by "glitch". I submitted a comment. It should have been posted, or if not, I should have been told why not. The reality remains that the entire legal establishment wants to talk only to itself.

I realize that as a Strategic Coordinator you probably have a rather limited voice. But I and other people like me are going to continue to try to reach those who do not want to hear from us. That included Robert Bauman and probably now includes Leonard Marchand.

I don't know what exactly it is going to take to wake them up. A reason I continue with my advocacy is that I regularly see responses - never what I'm seeking but responses that reflect very poorly on everyone.

My journey started many years ago - in the year 2000 actually. A few years later I stumbled onto something that has continued to inspire my determination, though there have since been additional highly consequential discoveries.

In December 2002 I made my first appearance in front of a BC Supreme Court judge. Self-represented, I was facing counsel for the Labour Relations Board, the City of Vancouver and CUPE Local 15. Promptly, just seven weeks later, the judge issued a judgment that found in

my favour (though not in fact what I was seeking). The conclusion and the remedy were exactly what an appropriately skilled lawyer would have won for me. My case was sent back to the BCLRB. I was at the early stages of playing a game of Snakes and Ladders. You move forward and then backwards, repeatedly. Litigation that starts with one issue can go on forever. Charles Dickens wrote a book about such a case. We could use a bit of his sage advice.

The situation is not sustainable. We are seeing more and more crises. Among the many disappointing things is the atrocious performance of the media, that refuses to look at the bigger picture.

Regards,

Chris Budgell

On Fri, 22 Mar 2024 at 08:09, Access to Justice BC <contact@accesstojusticebc.ca> wrote:

> Dear Chris,
>
> I had emailed you in August 2023, that we do not provide individuals with legal advice and I cannot assist you with the forwarded materials, in terms of the scope of my role.
>
> We have been cc'd to your Feb. 29, 2024 email below, among others. Once again, we have no role in specific complaints.
>
> I understand you are also asking separately about the appearance of a comment section on our website. That was likely a glitch and we are working to get some technical assistance. In the future, this email is how to reach us with inquiries.
>
> To reiterate, we do not provide legal advice or complaint resolution to individuals via the website, this email or otherwise. Please note that if you do not receive a response, it is likely because of this.
>
> Thank you.
>
> Sincerely,
> Tina
>
> *Strategic Coordinator*
> Access to Justice BC (A2JBC)
> www.accesstojusticebc.ca
>
> ---
>
> **From:** Chris Budgell

Sent: Thursday, February 29, 2024 12:14 AM
To: Supreme Court of Nova Scotia <communications@courts.ns.ca>
Cc: Alexander Gay <Alexander.Gay@justice.gc.ca>; Access to Justice BC <contact@accesstojusticebc.ca>
Subject: A response to what Chief Justice Deborah Smith said to the Canadian Lawyer Magazine

I've just found this article. As I have a severe hearing impairment I cannot listen to the podcast, so I'm relying on the text.

I live in British Columbia and have no connections to Nova Scotia. There being no prospect that I'll ever be involved in any litigation in Nova Scotia I hope you will consider passing this along to the Chief Justice.

She spoke about the Canadian Judicial Council. I believe that the information on this page about the Nova Scotia members of the CJC needs updating.

That's a minor point, however I notice things like that because of my interest in the CJC, which dates from 2010 when I submitted a complaint about the conduct of some judges in B.C. I was informed by the Executive Director, Norman Sabourin, that he forwarded my complaint to Council member Neil Wittmann, and that CJ Wittmann then dismissed it.

In 2012, in pursuit of another matter that was connected to what I had previously litigated, I found myself in front of one of the judges I had previously named: the only one I had not previously encountered. I had named her solely on the basis of her signature on this report, tendered to a government minister roughly seven years before she was appointed to the BC Supreme Court.

I handed her the two relevant pages from that report - PDF pages 73 and 74 of 110 - and asked her to recuse herself. She refused, and so I filed a second complaint, which was dismissed by Mr. Sabourin himself without referring it to any Council member. Only later did I learn that my 2010 complaint and its dismissal had been shared with the B.C. judiciary.

Subsequently I became involved with trying to assist someone else whose litigation issues had started very similarly to my own. We had connected through a website.

We pursued her matter to a complaint to the law society and then to a judicial review petition. The counsel for the law society sought and secured an order that the records of the matter would be sealed and any hearings closed to the public. We had, and still have, no explanation for why that was sought or granted.

At the courthouse there was no record of the matter at the usual place. We had to ask. That's when we learned that the matter had been assigned to this same judge.

There were four sheriffs stationed outside the locked doors of the courtroom when we arrived. I wasn't sure I would be allowed into the courtroom, but the sheriffs didn't seem to understand why they were there.

My associate again asked the judge to recuse herself and again she refused, so I filed a third complaint.

The response to the second complaint had provided me with just enough information to look into the question of the Executive Director's authority for dismissing complaints on his own. I concluded that that authority, put in place in 2003 with the creation of the *Complaints Procedures*, exceeded the mandate provided by the Judges Act. There's a legalese term for that issue: *delegatus non potest delegare*.

My impression is that, in general, CJC members can pay very little attention to the operation of the Council. It is most unfortunate that the news media / press corps do exactly the same. One result is that, while there is a lack of information, there isn't a lack of misinformation.

One interesting example is in this article, written by the the Chief Judicial Officer Emerita of the National Judicial Institute, Adèle Kent, in response to this article, written by Alexander Gay, General Counsel at the Department of Justice. Ms. Kent's article includes, "In 2022, the Canadian Judicial Council held a disciplinary hearing that resulted in a recommendation that Quebec Superior Court Justice Gérard Dugré be removed from office due to his failure to deliver judgments in a timely fashion and uncivil behaviour in court. He resigned shortly after."

If the Canadian media / press corps was doing its job properly then everyone, including Ms. Kent, would know that Justice Dugré is still a judge and that his lawyers, paid out of the public purse, are currently engaged in challenging the CJC's recommendation in the Federal Court. That can be verified here by entering *dugre* (without the accent) in *Search by party name:*.

Other members of the public don't have the time I have to inquire into these matters. But I have faith that an informed constituency is going to emerge. And I think that prospect worries the entire legal establishment. At least it certainly should.

Sincerely,

Chris Budgell

Chief Justice Hinkson
Associate CJ Cullen
BC Supreme Court
800 Smithe Street
Vancouver, B.C.
V6Z 2E1

Chris Budgell

September 26, 2014

Dear Chief Justice Hinkson / Associate Chief Justice Cullen,

I am writing to you to request that you take action on a specific issue that I believe falls within the mandate of the Chief Justice and/or the Associate Chief Justice. It pertains to the assignment of cases, a process that remains a mystery to everyone outside the legal establishment.

I am not a lawyer. Acting nominally on behalf of another person (though I note in a public interest case that could be brought by anyone) I've commenced a judicial review that is scheduled to be heard on October 14 & 15. Although I intend to forcefully argue in this hearing that there is an overriding institutional bias on the part of the courts (prejudicing in particular parties not represented by professional counsel who are adverse to parties that are professionally represented), I feel it is also essential to address the concerns I have, based on past experience, about case assignments I have seen that raise issues of individual conflicts of interest and apprehension of bias.

The most notable of those experiences to date was the assignment of Justice Miriam Gropper to hear a matter in which I was opposed by Crown Counsel. On arriving at the courthouse I was astounded to see her name on the board, as I had named her in a previous complaint to the CJC because of her involvement when she was a lawyer in what I have alleged (and continue to allege) was the surreptitious and illegal amendment of Section 13 of the Labour Relations Code, effected in 1997. The new matter also crucially involved Section 13.

The CJC had neglected to inform me that it had in fact shared my complaint and its summary dismissal with Justice Gropper. I did not learn that until well after I appeared before her. However, I did bring to her attention the document she had signed that I maintain implicates her in that illegal amendment. And I asked her to recuse herself, which she refused to do.

No reasonable person is going to believe that Justice Gropper's assignment to that case was a coincidence. The response from Executive Director Norman Sabourin to my second complaint will very soon result in a third complaint to the CJC – about the conduct of the Council itself and in particular its Chair in altering its bylaws in 2002 to include what I'm alleging is, similar to BCLRC Section 13, an illegal gatekeeper device.

The International Commission of Jurists has heard from me about the CJC matter and has responded with an indication of interest. I want to ensure that every member of the Council is aware of that matter.

I believe that what I have uncovered through litigation and research reveals a pattern of recklessness, most consequentially by members of the judiciary.

For now, what I am asking is that you provide me with an account of the BC Supreme Court's case assignment protocols and an assurance that, the institutional bias issue notwithstanding, there will be no cause for additional concerns arising specifically from the assignment of the matter we now have scheduled.

Sincerely,

Chris Budgell

Cc: Suzanne Anton, BC Minister of Justice

THE SUPREME COURT
OF BRITISH COLUMBIA

THE LAW COURTS
800 SMITHE STREET
VANCOUVER, B. C.
V6Z 2E1

October 10, 2014

Chris Budgell

Dear Mr. Budgell:

RE: Your letter of 26 September, 2014 to the Supreme Court

I am Legal Counsel for the Supreme Court. I am writing at the request of Chief Justice Hinkson to respond to your letter of September 26, 2014, which was addressed to the Chief Justice, and to Associate Chief Justice Cullen.

Your letter asks for 'an account of the BC Supreme Court's case assignment protocols'. Matters pertaining to the assignment of cases are within the exclusive jurisdiction of the Chief Justice and Associate Chief Justice. Neither parties nor counsel may choose the judge who presides in a given case; rather the assignment of judges to particular cases is an important aspect of judicial independence and information relating to case assignment and the scheduling of the judges' rotas is confidential to the judiciary.

Yours truly,

HMPaucei

for/ K. J. Leacock
Legal Counsel, BC Supreme Court

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20141014
Docket: S142018
Registry: Vancouver

Between:

Linda Holliston

Petitioner

And

Law Society of British Columbia

Respondent

SEALED FILE

Before: The Honourable Madam Justice Gropper

Oral Ruling re Application by Petitioner to be represented by Christopher Budgell

In Chambers

Appearing on her own behalf:	L. Holliston
Counsel for the Respondent:	M.G. Armstrong, Q.C.
Place and Date of Trial/Hearing:	Vancouver, B.C. October 14, 2014
Place and Date of Judgment:	Vancouver, B.C. October 14, 2014

[1] **THE COURT:** Linda Holliston, the petitioner, seeks an order that I allow her friend and advisor, Christopher Budgell, to represent her in this hearing.

[2] The petition seeks to set aside a decision of the Review Committee of the Law Society of British Columbia resolving to take no further action in respect of a complaint filed by Mr. Budgell on behalf of Ms. Holliston.

[3] The respondent Law Society opposes Mr. Budgell's participation in the hearing on the basis that it constitutes a breach of s. 15 of the *Legal Profession Act*, S.B.C. 1998, c. 9. Section 15 specifically deals with the authority to practice law, the relevant portions of which are:

> 15 (1) No person, other than a practicing lawyer, is permitted to engage in the practice of law, except
>
> > (a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,
> >
> > (b) as permitted by the *Court Agent Act*,
> >
> > (c) an articled student, to the extent permitted by the benchers,
> >
> > (d) an individual or articled student referred to in section 12 of the *Legal Services Society Act*, to the extent permitted under that Act,
> >
> > (e) a lawyer of another jurisdiction permitted to practice law in British Columbia under section 16(2)(a), to the extent permitted under that section, and
> >
> > (f) a practitioner of foreign law holding a permit under section 17(1)(a), to the extent permitted under that section.
>
> ...

[4] Subsection (5) of s. 15 provides:

> Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court, in the person's own name or in the name of another person.

[5] Ms. Holliston says that Mr. Budgell is a friend and that she has relied upon him extensively throughout the proceedings giving rise to this petition, including her complaint to the Law Society about the conduct of the employer's legal representative at the arbitration hearing concerning her grievance relating to her dismissal.

[6] Ms. Holliston asserts that there has been no concern expressed about Mr. Budgell's representation of her before the Law Society. She says that she needs his assistance in navigating these proceedings and that, without him, no one is on her side. She has asked that I review an article provided at Tab 9 of her brief of authorities entitled, "The Troubling New Science of Legal Persuasion: Heuristics and Biases in Judicial Decision Making", prepared by Craig Jones, Q.C., and contained in *The Advocates Quarterly*, Volume 41, 2013. I have reviewed that article.

[7] She also has referred to an article by Constance Backhouse that describes a "lesson" for newly appointed judges not to dismiss claims by self-represented litigants for that reason only.

[8] Ms. Holliston also asserts that I ought to recuse myself based on Mr. Budgell's letter to the Chief Justice and the Associate Chief Justice on September 26, 2014. I have already considered that application and have declined to recuse myself.

Analysis

[9] Mr. Budgell's involvement in this matter is described in his affidavit, indeed the only affidavit filed in this proceeding, contained at Tab 2 of the chambers petition record, and I am quoting from paragraphs 1 through to 7. Mr. Budgell says:

> 1. I have been assisting the Petitioner, Linda Holliston, since she was put in touch with me in early 2011 through a web site that is focused on trade union issues. I was at one time a member of another local of the same union (CUPE) as Ms. Holliston and as a result have had some experience with the relevant legal proceedings, including judicial review. I have personal knowledge of the matters I refer to in this affidavit.
>
> 2. In February 2011 I saw a short article in the Vancouver Sun about the result of a labour arbitration hearing of Ms. Holliston's employment termination case, however she was identified only by her initials.
>
> 3. Within a month or two of the publication of that article Ms. Holliston contacted the administrator of a website called www.uncharted.ca and that administrator put her in touch with me. One telephone conversation was sufficient for me to conclude that she was not guilty of the workplace conduct of which she had been accused and I committed to assisting her.

> 4. I gave Ms. Holliston advice on the basis of which she proceeded with the appropriate applications to the BC Labour Relations Board challenging the conduct of the union; however the Board dismissed her case.
>
> 5. Near the end of 2012 I realized there was another key issue that had not previously come to my attention after I found the website of the Private Investigators' Association of B.C. . . . and learned something about this profession including the existence of the licensing regime that is run by a branch of the Ministry of Attorney General. I concluded that the individual whose report had triggered Ms. Holliston's termination had acted in a capacity that required such a licence.
>
> 6. Ms. Holliston contacted the appropriate office of the A.G. and in due course we learned that the individual in question had not been licensed. After some consideration of this news I concluded that Ms. Holliston had grounds for bringing a complaint against the lawyer who had acted for the employer. Based on Ms. Holliston's account and the available evidence I concluded that the lawyer, employed by the firm Harris and Co., had direct interaction with the unlicensed investigator and that she, or her firm, had paid him.
>
> 7. I acted for Ms. Holliston throughout the Law Society complaint (and subsequent review) process...

[10] The affidavit goes on to describe extensive communications between Mr. Budgell and the Law Society staff lawyer, Ruth Long, and also letters between Ben Meisner, the appointed bencher, who advised Mr. Budgell that the LSS would not proceed with his complaint.

[11] The Law Society refers to a series of decisions involving a layperson wishing to represent a party in court. In *Holland v. Marshall*, 2009 BCCA 582, the court refers to the principles applied by Madam Justice Nielson concerning the exercise of the court's discretion to grant privilege of an audience, referring to *R. v. Dick*, 2002 BCCA 27 at paragraph 39:

> [T]his Court observed that granting a privilege of audience to a person who is not a lawyer is a matter that lies within the court's discretion, and should be exercised rarely and with caution. Considerations should include ensuring that litigants are competently and ethically represented, that the integrity and fairness of the court process is maintained, and that the proceedings are conducted in a manner that will command the respect of the community.

[12] Mr. Justice Grauer referred to the principles in the decision of *The Law Society v. Robbins*, 2011 BCSC 1310, at paragraph 38:

> It follows that if a person in the position of Mr. Robbins [the individual who sought to represent the litigants in a proceeding],does nothing more than assist a party by appearing to speak on his or her behalf at a hearing for free, then he is not practising law and the Law Society is in no position to intervene. That person will be subject only to the court's overriding discretion, in the case of persons who are neither litigants nor lawyers, to grant or withhold a right of audience. Where, however, a person takes in hand not only advocacy or assisting in the drawing of a document, but also the overall prosecution or defence of a proceeding, as a solicitor was wont to do, then he is practising law, or at least contravening section 15(5), and the Law Society may intervene.

[13] On the basis of Mr. Budgell's affidavit and Ms. Holliston's submission, I am satisfied that Mr. Budgell has throughout provided Ms. Holliston with advice, including legal advice; for example, whether she is guilty of the workplace conduct of which she had been accused, whether the private investigator was required to have a licence, and in all matters before the Law Society. While I accept that Mr. Budgell's role before the Law Society of British Columbia's complaint procedure was not questioned, it is now.

[14] Based on again Mr. Budgell's description of his involvement in this matter, I find it to be contrary to s. 15(5) of the *Legal Profession Act*. He is not a lawyer and there is no basis to allow his representation of Ms. Holliston in these proceedings.

[15] The criteria to which Nielson J.A. referred are not satisfied. First, the court's discretion in granting an audience is to be exercised rarely and with caution. I find that there has been no basis provided upon which I ought to exercise such discretion. Two, ensuring the litigants are completely and ethically represented, I have no evidence about Mr. Budgell's competence and he is not constrained by any ethical rules. In respect of the third criteria, that is that the participation of the lay representative would command the respect of the community, I find that Mr. Budgell's personal involvement with the courts, which have been largely unsuccessful, demonstrates that he has his own agenda and that that is likely to overwhelm the hearing of this petition and may not be in Ms. Holliston's best interests. I also find that he is unlikely to conduct the hearing in accordance with the procedures required.

[16] I wish to make it clear that I am not rejecting the petition on the basis that Ms. Holliston is self-represented, nor would I. I will hear the petition and decide upon it in accordance with the facts and legal authorities presented to me in accordance with my judicial responsibilities and obligations. Ms. Holliston will have a fair hearing of her petition.

[17] Mr. Budgell is not entitled to represent her in these proceedings.

Gropper J.

1992 Legislative Session: 1st Session, 35th Parliament

HANSARD

THURSDAY, NOVEMBER 26, 1992

Afternoon Sitting

Volume 6, Number 24

http://leg.bc.ca/hansard/35th1st/h1126pm.htm

On section 13.

V. Anderson: As we look at section 13, which is procedure for fair representation of complaint, we notice that in the previous sections of this bill the minister was attempting to present a new approach and a new understanding. He has attempted to say, particularly in relation to natural justice, that they were creating a new awareness of possibilities for people to receive the justice that they deserve. In this particular section they have put forward some protections -- and I emphasize some -- for individuals in the workplace from the trade union and from their employers. However, the protections that they have put forward are only against the actions that are covered by the code itself.

As we know, in many actions that take place in our lives, the technical or legal regulations are not always the main problem. The main problem may be one of misunderstanding, of different jurisdictions or of communication.

In other areas this Legislature has seen fit to create the position of the ombudsman, so that when the regular systems break down and communication is not adequate to look at the root causes of the difficulty, there is the opportunity for this to met and countered.

There are many difficulties that people face in dealing with situations -- not only difficulties with the employer or with the decisions or actions of the union, but also difficulties with the actions of the labour board itself, the ministry or the departments of government.

These actions leave the individual unable to cope, because most employees are not in the position financially, physically or emotionally to take on whatever system happens to be turned against them, even if that system has turned against them by accident and not by design. It's very difficult for an individual who is cut off and has the feeling of being ostracized to begin to put forth the opportunities they need.

There needs to be in place some kind of opportunity for people to have their voices heard, to express themselves and to get others to join them. They need to find someone who will stand on their behalf as their advocate and make sure that the circumstances are looked at from all sides and all positions and are dealt with fairly, so they can be heard and feel that their needs have been considered.

We realize that in the code that this is attempting to replace, there was the opportunity -- although not proclaimed -- for the ombudsman position. I'm sure the fact that it was in the act had a detrimental effect, because people were aware of something they could have called on. Even in the explanations of that position, the concerns and items that needed to be taken into consideration were clearly described. In the activities of the Labour Relations Board itself, they would know that these conditions were there. They would be able to take these positions into account in their considerations, and they would be able to operate as if they were there and these positions were in place. The very fact that this opportunity was there and could have been proclaimed when the need arose was a very important position.

It is important that we express to the people of this province and the individual worker, however humble or great their position might be, that there is an opportunity for their positions to be heard, clarified and fairly dealt with. As we have seen in this particular act thus far, there are difficulties in the definitions. We have seen difficulties in the purpose of this act and each of the clauses we have dealt with in some detail; there is a lack of clarity as to the well-being of employees, particularly within whatever system they may work.

It is important that we take the concerns of these people seriously. As I indicated earlier in this discussion, the individuals who came into my constituency office and who I came to know in their circumstances even prior to becoming a member of the Legislative Assembly were those people who had gone through the system that was available to them. They had tried to deal with the appeals that were put before them and found that they got caught up in the bureaucracy. Because of the bureaucracy, not necessarily the evil intent of any person, there was no hope for them to resolve their circumstances. Not only was this a crisis in the individual person's life, but it became a crisis in their family life for their children, spouse and all who were closely related to them. It became a crisis within the community itself, for many lost their employment opportunities and their self-confidence, and many were forced into the other government support system when they should have been given the opportunity to clarify their situation and renew their lives.

In this act there must be an opportunity for these people to come through whatever difficult circumstances they find themselves in and have an opportunity and a channel by which they can proceed after a breakdown in employment, after a confrontation with the union, the employer, the Labour Board or the government to find a way to bring the pieces back together again. They must have some kind of help available to them in those circumstances. It seems to me that unless we put that kind of concern, thoughtfulness and opportunity into place, we are simply dealing with rules and regulations, not with the lives of people. It's the lives of these people that we must be concerned about, and who this bill is here to serve -- not that people must be dictated to or have to conform to the laws within the bill itself.

Naturally the laws need to be legal, and we have to take them into account. But when we discover in actual circumstances that the laws or the regulations are unjust, and when the people who enforce the regulations admit that what they're doing is not for the well-being of the people for whom they are doing it, they have no choice, because that's what the regulations say.

Time and time again, hon. Chair, in dealing with the social services system, people have been unable to get their needs met and have come to the point of a tribunal. In the tribunal they have sat down with the representative of the government and with their own advocate, and they have looked at the picture in total framework. Time and time again the representatives of the government have had to say that not only do we have to act upon this law, but we have to act upon the interpretation of the law -- namely, the regulations that have been passed down to us. Time and time again in that tribunal all three members -- the representative of the government, the representative of the individual and the neutral chair -- have read the act for themselves and have discovered that the regulations by which the workers were to operate in that circumstance did not meet the needs, and the act itself begged to be interpreted much differently. Time and time again the very actions, which technically were decided upon according to the regulations and the rules when they were reviewed in the common sense of an interrelated dialogue to look at all the issues in question, were overturned. Those judgments were upheld, and they received the compensation and the justice they deserved.

That kind of opportunity is not given here in "Procedure for fair representation complaint." The material that follows does not cover the circumstances that need to be covered. They cover in part what relates to trade union actions or employers' actions; but they do not cover the actions of the labour board itself and its decisions, nor do they cover the actions of the bureaucracy of the ministry in which they are so often caught.

Therefore, hon. Chair, I would like to make an amendment to section 13, by the addition of the following subsection (3):

"The Lieutenant-Governor-in-Council shall appoint a person to be called the labour ombudsman, who shall hold office during good behaviour for a term of five years, and for additional terms the Lieutenant-Governor-in-Council appoints, and be paid the remuneration the Lieutenant-Governor-in-Council determines."

Hon. Chair, there's an extra copy for the hon. minister, if he would wish to receive it.

"13(4) The labour ombudsman has the power to investigate any decision or recommendation made, or act done or omitted, relating to a matter of administration, including the merits of a policy, and affecting any person, by (a) any board, commission, council or other tribunal under this act or any other act administered by the minister, or any branch or agency of the Ministry of Labour...."

The Chair: I should have advised the member that under standing orders his time has expired. Would the member please take his seat.

Hon. M. Sihota: Hon. Chair, I have no difficulty with the hon. member making the amendment. I'll speak to it in a second whether it's in order or not. There's certainly no need for him to read it. We do have a copy of it now. It goes on for some five pages, I believe. I don't think it's necessary to have it read if it's filed. I'd like to raise a procedural issue, but....

An Hon. Member: He has the right to read it.

The Chair: Hon. member, it is customary to table your amendment -- and the member is permitted to make a statement. The minister indicated that he is prepared to accept the amendment without a decision with respect to it being in order or not. There has been intervening debate. This would allow the member to continue if he would like to speak to his amendment.

V. Anderson: This particular amendment is very similar to that which has been a possibility in the last two labour bills in this province. I believe it was originally introduced in the labour bill presented by the then NDP government in 1973. Some of the comments that were made about it at that time are particularly appropriate. I quote from Hansard on the validity of this particular amendment.

Hon. M. Sihota: Point of order. Before we get into an extensive speech on the amendment, perhaps it would be appropriate for the Chair to determine whether or not the amendment is in order. I would at least like to have the opportunity to put to the Chair the argument that it is not in order.

Section 13 lays out a procedure with respect to complaints made under the provisions of section 12. It does not deal with any matter that in any way relates to complaints about the Labour Relations Board or the ministry. The purpose of the amendment goes far beyond the scope of section 13. It is not relevant or tied in with section 13. It deals with a new topic. The bill has been debated in principle already. At that time I believe the hon. member did raise this issue. But from a procedural point of view I cannot see how it has any relevance to the duty-of-fair-representation provisions as they are contained in the findings made by the board. This goes beyond the duty of fair representation and talks about the powers of the ombudsman to review the legislation. "The ministry, any board, council or other tribunal that is established under this act, any act administered by the ministry, any branch or agency of the Ministry of Labour, or any officer, employer or member thereof...." So it goes well beyond the scope of this section, and I would argue that it's not relevant.

The Chair: Thank you, hon. minister.

Hon. member, under your section 13(3) you make reference to the need for an ombudsman. Of course, as all members know, any matter that involves an expenditure by the Crown has to come in the form of a message from the Lieutenant-Governor. On that point alone the amendment would not stand the test of being in order, and I would so rule that it is out of order.

G. Farrell-Collins: It's perhaps unfortunate, I guess, that there wasn't some provision made in the bill for that type of representation. I think the words of the member for Vancouver-Langara were very wise and appropriate. All I can say is that it is unfortunate that there is not a provision somewhere in section 13 for that type of amendment, but so be it. That's the government's choice, I guess. We've raised our opposition and proposed our amendment.

V. Anderson: Hon. Chair, I appreciate your ruling and understand your particular reason for that ruling. But I would also urge the minister to reconsider, not the ruling of the Chair but the need for this kind of provision. I would urge that this kind of provision be made available as the act proceeds, because it could be made not in the fashion that it was presented here but simply by moving to add the concerns related here to the present Ombudsman Act. I would urge the minister to consider and discuss that, because there is more than one way of dealing with the essence of what is presented here so that these needs could be tied in and the needs of individuals could be met. Would the hon. minister be willing to look at items within this act whereby the concerns of people related to the ombudsman concerns would

be addressed, perhaps by tying them in with the present Ombudsman Act, which is available for us to use?

I'd be interested, if the hon. minister is willing to consider that.... If so, we would know that's forthcoming, and we could be assured that that is not overlooked.

Hon. M. Sihota: On the need for an ombudsman, it should be noted that there is an act that deals with the establishment of the office of the ombudsman. The act allows the ombudsman to look into the affairs of the Ministry of Labour, as the ombudsman has done from time to time. The act also allows the ombudsman to make inquiries of the Industrial Relations Council, as it is now, and it will with regard to the Labour Relations Board in the future. The individual must first exhaust the remedies within this legislation before they can go to the ombudsman, but the hon. member can rest assured that the ombudsman has jurisdiction to take a look at the activities of the Labour Relations Board and the ministry. Therefore I would suspect that he would appreciate that that should provide him with a measure of comfort.

C. Serwa: Speaking on behalf of our Labour critic, the feeling in our caucus is that this section cannot be amended, because it is fundamentally flawed. There is currently an obligation on unions to reply to complaints from their individual members. Apparently this section removes that need for response of a union.

Hon. M. Sihota: Perhaps I can just go back a bit. There are sections that require trade unions to pursue grievance arbitrations because they wish to avoid a fair representation challenge. Consequently, what happens is that grievance arbitrations which really should not be going forward do go forward, and because they do -- and they really shouldn't -- they first of all result in unnecessary cost and expense to both employers and employees. That's a good enough reason to not allow it. Second -- and I think this is an important point -- they also cause a lot of cases that really should not be going through that process to be a part of that process, and that tends to disease the relationship between management and labour. Management gets irritated that cases that clearly shouldn't be there are there, and labour goes through a half-hearted approach in terms of representation because they wish to avoid a fair representation challenge. This clearly is not conducive to good industrial relations, and as I said, it results in additional costs for all parties.

All parties recognize that this was a problem under the previous legislation, and all felt that there had to be a fine-tuning of the balancing of the rights here: on the one hand, the right to make sure that the cases that should be heard are indeed heard, regardless of the cost factor; and on the other hand, the right to make sure that cases that are somewhat borderline or frivolous are not going forward, because they're not conducive to good industrial relations.

The process established in this section provides a fair and expeditious adjudication of fair representation complaints, such that trade union members will be adequately protected and unmeritorious grievances are less likely to be pursued. A number of submissions were made to the special advisers by employers or employer organizations, requesting changes to the administration of this provision to simplify the hearing process and reduce the necessity of employer involvement in disputes between unions and their members. I highlight that point, because the members should know that this was as much a thrust from employers as it was from employees.

[M. Farnworth in the chair.]

It's interesting to note that under the applications for duty of fair representation in the past, we were indeed seeing a considerable number of applications. Let me just bring that information to the attention of the hon. member. For example, in 1987 there were 81 complaints; in 1988, 105 complaints; in 1989, 79 complaints; in 1990, 94 complaints; and in 1991, 102 complaints. That's a lot of complaints, probably in the neighbourhood of 400 to 500 over that five-year period. But the number of orders granted with respect to those complaints were as follows: only 6 out of 81 in 1987; 7 out of 105 in 1988; 3 out of 79 in 1989; 1 out of 94 in 1990; and 4 out of 102 in 1991. So the percentage of the cases that were actually granted, that were deemed to be meritorious at the end of the day, was a fraction of the number of cases that were actually going before the board, and that tends to reinforce the point that I made.

Since there are obviously some cases that are meritorious, it is important that the procedure recognize that. That's why the ***prima facie*** **provisions** which appear in 13(1)(a) are there: to make sure the ones that are meritorious get through. In this way we can reduce some of the workload of the Labour Relations Board, have the cases come forward that ought to come forward, weed out the ones that disease the relationship and provide some cost assistance to all the parties.

I understand the reason that the Social Credit caucus may have difficulty with this provision inasmuch as it varies significantly from previous provisions. But I would hope that the hon. member now understands the reasons why we have chosen to proceed with it.

C. Serwa: I thank the minister for that information. In tendering that, it brings to mind the question of how many of those cases were initiated by a worker, with respect to the union representing that worker. I don't know if the breakdown in statistics divulges that. If it doesn't, it's still a substantial question.

Again, my concern here is with respect to the individual worker and the roadblocks that this section appears to put in front of that worker to develop and meet a lawyer's standard of a ***prima facie*** **case** before the union is required to respond. First of all, that is difficult, because only the union possesses the full information on how it handled the situation which led to the complaint, and it's not available to the worker in this particular case. So if we can focus on this element rather than simply on the employer, we should look at it from the perspective of the worker and the union.

The Chair: The minister.

Hon. M. Sihota: Thank you, hon. Chair. It's a pleasure to see you in the chair.

With regard to the question from the hon. member, all of the applications that I referred to were brought forward by employees. You can see that there are quite a few, but you can also see that quite a few were unmeritorious.

With regard to your comments about ***prima facie*** **evidence**, I don't think you should assume that because all the information is in the possession of the union, as you suggest, that would prevent a ***prima facie*** **determination**. Employees obviously get to put forward a ***prima facie*** **case** as well. I would think that given that these are somewhat employee-driven, the board would look at the ***prima facie*** **evidence** from both sides before it considers whether or not the case discloses such evidence so as to serve a notice of the complaint on the trade union. So I think it does provide the protection that you suggested it wouldn't.

C. Serwa: There seems to be a substantial diversity in standards here, where the union member appears to have roadblocks in front of him or her in this particular section, but those same roadblocks do not exist in the case of the union's position against employers. The union has a much stronger position, and it's not necessary to develop the same degree of a ***prima facie*** **case**. In our opinion, it indeed shows a substantial amount of bias toward the central agency or the central control of the union body.

Hon. M. Sihota: Perhaps I didn't make it clear enough. If you read 13(1), it says: "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." In other words, it's not for a trade union to make the ***prima facie*** **case**; it's for an employee to make that case. Secondly, once that case is presented, then it causes the board to investigate. Thirdly, once the investigation has commenced, then their determination is made as to whether or not there should be a hearing.

That is preferable to the current situation where there is no ***prima facie*** **opportunity** to make the case, so as to weed out the cases. Secondly, it means that an employee, under the current situation, would have to make their case without the benefit of a preliminary investigation and in front of the whole board as if it was a full hearing, with all the attendant costs. This actually assists employees, from that perspective, with regard to this provision.

L. Stephens: If the employees who may be putting forward this ***prima facie*** **case** are not skilled or have difficulty, would the minister provide counselling or assistance, as is done at Workers' Compensation?

Hon. M. Sihota: They are assisted, hon. member, by an investigating officer appointed by the board.

F. Gingell: I must admit that I didn't see anything in section 13 about an investigating officer. Is that a requirement set out by the regulations? Or is it in some other portion of the act?

Hon. M. Sihota: I refer the hon. member to section 14. I guess this is my frustration with the opposition. They don't always seem to do their research. Section 14 deals with the opportunity of the board to appoint an officer to inquire into a complaint. So if you read 14, you'll see that there's assistance provided.

F. Gingell: I'm just fascinated by this. The minister couldn't respond to the question until he had been advised by his assistant. I find your remark most uncalled for. You had to respond. You had to get advice. Anybody watching this House on Hansard television would see, hon. minister, that you have your own standards for your own behaviour and different standards for other people.

Hon. M. Sihota: That's a point of debate, but you're wrong. I'll tell you something else, hon. member, if you want to get into that kind of stuff. I've sat here for four days presenting example after example where your caucus has been able to do the necessary research. I've listened to your Labour critic suggest in this House directly that his research staff have been in frequent contact with the B.C. Federation of Labour.

G. Farrell-Collins: Point of order. The member has already stated that he is bringing a point of privilege in that regard before this House. He's trying to go around the rules of this House to bring up his petty little concerns. He's acting very much the same way he did with the Kelowna Chamber of Commerce when they were here, when they called him rude.

The Chair: We are on section 13. I would ask all members to be relevant to that section.

Hon. M. Sihota: To make it clear, there's a section that deals with the procedure for fair representation complaints. It sets out a procedure that the most simple-minded people in British Columbia can read. It seems to me that the opposition cannot take the time to read one section and compare it to the next in order to come to an understanding of what's contained in the legislation. It has demonstrated over and over again it is one of the most ineffective and inept oppositions in the history of this province.

G. Farrell-Collins: Point of order. The minister is clearly not relevant to the debate. If his opposition had been a little more effective, we wouldn't have had the type of government we had last time.

The Chair: Please, hon. member, address your remarks through the Chair.

G. Farrell-Collins: If the Chair was fair, we'd be glad to.

The Chair: The rulings of the Chair are not subject to debate -- standing order 9.

F. Gingell: Perhaps the minister could advise me on a very simple question, which I'm sorry I don't know the answer to. Would the panel that would be set up be a child of the board? Or does it consist of board members? Would it only consist of board members? Or would the board be authorized and empowered to appoint the panel from non-board members?

Hon. M. Sihota: It's a panel of board members.

K. Jones: I rise on a point of order. There doesn't appear to be a quorum in the House.

The Chair: Will the House come to order. There appears to be a quorum now.

Section 13 approved.

From:
To: LRC Review LBR:EX
Subject: Contract flipping code review
Date: February 26, 2024 5:41:20 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to “providing stable labour relations and supporting the exercise of collective bargaining rights,” as stated in Minister Bains’ 2022 Mandate Letter.
The entertainment industry needs this protection as contract flipping has happened to us in the past and threatens us still as it is being used increasingly throughout North America as a means of preventing or removing union representation.

Most of us depend on work on a casual basis and so are part of the vulnerable “gig economy,” although we mostly work as employees, not contractors. Many of us in the industry, working at and supplying some very large venues, do not have the benefit of union jurisdiction. Others, working at unionized venues know that they might find their jobs contracted out to non-union supplier.
Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.

Conrad Tugnum

From:
To: LRC Review LBR:EX
Cc: Falcon.MLA, Kevin LASS:EX
Subject: Review Panel - Submission regarding important protections for workers in BC
Date: March 2, 2024 2:50:46 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.
-Corin Gutteridge

From:
To: LRC Review LBR:EX
Cc: Kirkpatrick.MLA, Karin LASS:EX
Subject: Interested B.C. resident submission re: successorship protection
Date: February 26, 2024 5:58:10 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We working as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.

--Dave Wilson

From:
To: LRC Review LBR:EX
Subject: Expand successor rights
Date: February 27, 2024 12:34:19 AM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to “providing stable labour relations and supporting the exercise of collective bargaining rights,” as stated in Minister Bains’ 2022 Mandate Letter.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.

David Raun

From:
To: LRC Review LBR:EX
Cc: Morris.MLA, Mike LASS:EX
Subject: Labour code review
Date: February 26, 2024 5:07:00 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to “providing stable labour relations and supporting the exercise of collective bargaining rights,” as stated in Minister Bains’ 2022 Mandate Letter.
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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.

Gary Harris

From:
To: LRC Review LBR:EX
Subject: Fw: Labour Relations Code Review Submissions (edited)
Date: February 20, 2024 12:12:08 PM

Hi,

I submitted these items for the Labour Relations Code Review and would like to attend the Virtual Hearing on April 9th for Kamloops to make an oral presentation.

Thank you,

Jason Arnold

From:
Sent: February 2, 2024 10:26 PM
To: lrcreview@gov.bc.ca <lrcreview@gov.bc.ca>
Subject: Labour Relations Code Review Submissions (edited)

Hi,

Here are some submissions I'm putting forward that will hopefully be included / legislated within the updated Labour Relations Code:

Here's a Resolution our United Steelworkers (USW) Local 7619 / USW District 3 put forward at the most recent BC Federation of Labour Convention and that we also put forward at the recent BC NDP Convention, and I feel it is of the utmost importance.

Preamble:

Because there is an obvious imbalance / unfairness when it comes to corporations / companies not being held accountable & not being proportionally penalized when they blatantly violate Collective Bargaining Agreements, in comparison with unions having to hold true to the grievance / arbitration procedure and if there's any job action from the floor, members are likely to loose their jobs and the union is likely to be fined potentially in the millions for any

lost profits per day, thus creating a massive imbalance which needs to be corrected.

Resolution:

The Federation will therefore seek to work with the Affiliated Unions to legislate change within Labour Law, with the goal of achieving balance and fairness when it comes to holding corporations / companies accountable if they choose to blatantly violate Collective Bargaining Agreements, with the resolve to hold them accountable with proportional penalties, which will increase exponentially with any repeated violations.

Further thought / info:

We need to see the Labour Code / Labour Laws / Collective Bargaining actual mean something and actually work, meaning many companies / big corporations say they agree to the language negotiated at the bargaining table but then they blatantly ignore much or all of the language agreed to within a CBA, and they simply say, if we don't like it, grieve it, and force unions / locals / members to take hundreds of grievances through the arduous process to arbitration, and it is all really being done by many / all of these unethical companies in a union busting effort to frustrate union reps and union members, when these companies have millions - billions in their bank and use the faulty / unfair / unbalanced / unenforceable current system in place where companies can in fact violate CBAs at will and force unions / locals to fight for everything already agreed to through the grievance and arbitration process, when they shouldn't be able to do this and they should be highly penalized monetarily - far more than they are currently when found to be in violation of CBAs, and these fines should be paid to the union / locals that have their CBAs violated, and these union attacking / union busting companies should pay far higher and exponentially higher penalties - awards to the unions / locals when found to repeatedly violate the same articles in a CBA, and they should also pay all costs for the union local members when they are found to be in violation but not us if we lose an arbitration as companies have millions more to blow on lawyers etc than we do.

Here's another Resolution we put forward at the most recent BC Federation of Labour Convention and that we also put forward at the recent BC NDP Convention:

Preamble:

Because the cost of living has seen compounding escalation recently as well as growing slowly over decades without correction, while multi-billion dollar corporations / companies / ultra rich individuals profiteer off of us and are making all time record high profits even through global crises like the climate crisis, the pandemic, and war for some examples,

Resolution:

The Federation will therefore work with the Affiliated Unions in a collective effort to

encourage the Provincial Government to legislate a Cost of Living Allowance within the Provincial Labour Laws for all workers whether they are non-union or in a union with an existing Collective Bargaining Agreement or whether they are currently in negotiation talks with their company, similarly to how the 5 Paid Sick Days improvement was implemented.

Further thought / info:

We need a cost of living allowance / adjustment for all workers, union or non-union that's tied to inflation, similar to the minimum wage being tied to inflation, and similar to what some union locals have in their collective bargaining agreements, and similarly for ALL non-union workers as well as for ALL union workers - and with no loop holes for companies, but similarly put into law how the 5 paid sick days were finally implemented.

We also need to see Sectoral Bargaining Legislated with the aim of being able to include all workplaces in different locations that are with the same main employer so that they all can join with the organizing union of their choice and not have to do separate organizing campaings for every location. An example is with the Starbucks workers.

Additionally, further improvements to WCB are needed.

WCB has had some improvements recently in BC but still needs much more done to ensure it's there and in place to actually help injured workers as it should be intended instead of always being a fight for workers to be helped out when needed.

Also, there should be Weingarten Rights legislated, similar to what they have in the USA.

Weingarten Rights is that union reps / shop stewards etc and safety reps etc shall be in attendance in ALL cases / meetings / investigations etc that could lead to discipline for any member - every time with no loop holes.

Also, we should have similar or better than what the Minister of Labour in Ontario just legislated a 70% decrease in diesel exposure, and there should also be similar improvements to reduce the dust exposure amount as well.

There also needs to be restrictions put in place to not allow “rental unions” that companies have their employees join just so they can get contracts and work on unionized sites with “scab / company” unions such as CLAC being used just for the term of the contract then not afterwards. Additionally, I feel scab / company influenced unions such as CLAC should not be allowed to exist / recognized as a legitimate union at all within the BC Labour Relations Code.

We should also look at increasing the number weeks of paid holidays for all workers, and lowering the number of hours per week that workers need in order to qualify for all the full time benefits that companies should provide workers, and also look at implementing an executive to worker compensation balance, as many executives and CEOs make extremely non-proportional amounts of money into the millions for the work that they do compared to the work all the other workers do, when that money should be shared more evenly / fairly with all the workers who do the work that make the company their profits, and not just give such exorbitant amounts of money to just one person or to just a few, and should also make defined benefits pensions mandatory with indexing upon retiring so people don’t have to work their entire lives then struggle to survive during their retirement and then pass on, but so they can enjoy greater work / life balance in the working age years and then also be able to retire at a decent age, and hopefully enjoy many more happy / healthy years of their lives while they’re retired.

Sincerely,

Jason Arnold

From:
To: LRC Review LBR:EX
Cc: Donnelly.MLA, Fin LASS:EX
Subject: Recommend the expansion of successor rights to help protect vulnerable workers in the Entertainment Industry
Date: February 26, 2024 8:15:53 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to "providing stable labour relations and supporting the exercise of collective bargaining rights," as stated in Minister Bains' 2022 Mandate Letter.
The entertainment industry needs this protection as contract flipping has happened to us in the past and threatens us still as it is being used increasingly throughout North America as a means of preventing or removing union representation.

Most of us depend on work on a casual basis and so are part of the vulnerable "gig economy," although we mostly work as employees, not contractors. Many of us in the industry, working at and supplying some very large venues, do not have the benefit of union jurisdiction. Others, working at unionized venues know that they might find their jobs contracted out to non-union supplier.
Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Best regards,
Kenneth McDonald

From:
To: LRC Review LBR:EX
Subject: Labour Relations Code Review - Mary Malinski
Date: March 13, 2024 1:33:02 PM
Attachments: image001.png

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 168. We work as stagehands and technicians on live theatre, stage and concert productions on Vancouver Island.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to "providing stable labour relations and supporting the exercise of collective bargaining rights," as stated in Minister Bains' 2022 Mandate Letter.

The entertainment industry needs this protection as contract flipping threatens us as it is being increasingly used throughout North America as a means of preventing or removing union representation.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.

Mary Malinski | (She/Her)

From:
To: LRC Review LBR:EX
Subject: feedback
Date: March 11, 2024 6:35:06 PM

I urge you to recommend the expansion of successor rights to help protect vulnerable workers in the Entertainment Industry.
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From:
To: LRC Review LBR:EX
Subject: Bc Labour Code Review
Date: February 26, 2024 8:22:57 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to “providing stable labour relations and supporting the exercise of collective bargaining rights,” as stated in Minister Bains’ 2022 Mandate Letter.
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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Furthermore, contract flipping allows for inexperienced and untrained workers to inhabit spaces where skilled labour is a safety requirement. Such practices have and will lead to injuries both to workers and, in the case of concert and theatre venues, the general public. Please consider this massive safely concern and public liability in your ongoing deliberations.

Thank you for your work.

Sincerely,
Michael Kerns

From: LRC Review
To: LBR:EX
Subject: Labour Code Review — Expand Successor Rights to Entertainment Industry
Date: February 26, 2024 1:07:32 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work!

In Solidarity,

Owen Marmorek

From:
To: LRC Review LBR:EX
Subject: Section 2 BC Labour Code
Date: February 29, 2024 10:23:15 PM
Attachments: image1.png

[You don't often get email from. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Dear Review Panel,

The last time I wrote this panel I asked who was representing the employee on this review panel? No reply. I received no reply from Minister Bains regarding the same question.
Attached is the Hansard regarding John Martin addressing the Rights of the Union employee and Minister Bains capricious answer avoiding the true purpose of his intended questions. Evidently the Rights of the employee were not and are not part of Minister Bains's mandate. I did call John Martin's office about this. "…. nothing but Union Cronyism!" I was told.

According to Minister Bains's latest press release Ms. Bannister, you are now representing the Union Employee. Not to be condescending, is this not a conflict to represent both the Union and the Employee? Are you actually going to represent the 500,000 Union Employees in this Province by decreeing much needed change in the Labour Code starting with section 2, where the the Labour Board actually "Acknowledges the Rights" of the employees under the Code, not just recognizes their rights? Of course there is needed change to sections 12,13 14 as well. That way Ms. Bannister when a perverted Union blatantly contravenes its Duty of Fair Representation that Union employee's legal Rights can now be justified by an Impartial Labour Board. Minister Bains hit the nail on the head with his answer to John Martin's question with the word "May".
That's is exactly why Union Employees have absolutely NO Rights under the current Labour Code because the Board "May" wish to do as they prejudicially chooses to do as it has done for years.

Thank you for your time. I will be looking forward to these changes in the Labour Code.

Respectively yours,

Patrick Jardine.

From:
To: LRC Review LBR:EX
Cc: Chouhan.MLA, Raj LASS:EX
Subject: Protection from Contract Flipping in the Entertainment Industry
Date: February 26, 2024 8:47:10 PM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

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Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.
Paul Siczek

From:
To: LRC Review LBR:EX
Subject: Labour Code Review
Date: February 28, 2024 8:16:50 PM

The Panel,
Labour Relations Code Review

I am a proud member in full, dues paid, of two separate locals of IATSE, working in both the film and live events/stage industries. I want to add my voice to the many being raised about the concerns around contract flipping in the province of British Columbia. Personally I am disgusted that at this point in history we even need to visit this subject again. British Columbia was once a leader in Canada's labour movement. Having grown up in Alberta, which is famously hostile to Unions of any kind with a subsequent erosion of work place protections, it disturbs me greatly to see this province drifting towards becoming a hive of international money poisoned by corruption, driving the arts industries into the ground. History has shown time and again that when union strength begins to diminish, whether by self-inflicted wounds or by being beaten down by malignant corporate hegemonic interests, the work force becomes down trodden and eventually, society hollows out.

The mere threat of contract flipping being an option gives the employer an unfair advantage in negotiating contracts. Too often those employers are so devoid of any talent for management or for seeing past the next quarter results, they fail to understand the damage they do to their own institutions with short term thinking. I have seen, close up and too many times, how forcing out union representation not only does not save the employer any money, it creates new problems. A perfect example is the Rogers Arena, which is infamously a dangerous and unhealthy work environment for young workers just starting out. Riggit, the supplier of labour for events at that facility, is a festering cess pit of dangerous work practices and corporate greed. Far from being an alternative to a strong, healthy union with hundreds of years of accumulated experience, it is a prime example of how unions eventually become the only possible option for both the worker and the employer. Workers with almost no knowledge or experience are required to work for barely more than minimum wage, sometimes for as little as two hours before being forced into unplanned breaks and then expected to return much later in the day. It's a travesty, and an embarrassment to a province that supposedly has a labour friendly government in place. It's only a matter of time before this particular employer, with it's dangerous work environment, is responsible for work place fatalities involving hapless but eager young workers. This is only one of many examples that eroding labour protections have engendered in this province.

Labour representation and protections in many creative industries such as film, house personnel, 3D and animation have enjoyed a massive surge of late, as a result of profit driven, short sighted corporate greed. I am certain that if labour protections are not merely maintained but extended in the near future, there will be unrest on a massive scale. It is not Labour that needs to have its ranks thinned and its average earnings reduced, it is the bloated ranks of incompetent fat cats running the art institutions and facilities in this province. I despair we even need to have this review or this conversation.

This is an inflection point in history, and an opportunity to create a safer, more equitable arts industry is in front of us. Without better, stronger and more clear legislation across all industries, this opportunity will be lost, and British Columbia will continue its long slide into the abyss, notorious for once being among the leaders of the labour movement in Canada, now seeing much of the protections stripped away, with no obvious benefit in safety, fair income distribution or quality of life.

Please, do your job properly and well, and provide the strongest case possible in support of the protection and expansion of succession rights of strong labour practices.

Thank you,

Peter J. Morris

Briefing for the BC Minister of Labour

Enhancing Labour Relations in BC: Insights from the Iron Law of Oligarchy and the ITU's Democratic Model

Samuel Adair March 20, 2024

Overview

This briefing synthesizes concepts from the Iron Law of Oligarchy and the democratic practices of the International Topographical Union (ITU) to propose enhancements to British Columbia's Labour Relations Act. The aim is to create a more balanced, participatory, and transparent framework for labour relations in the province, drawing lessons from theoretical insights and practical implementations.

1. Introduction

This document explores the relevance of the Iron Law of Oligarchy—a theory suggesting organizational leadership tends to concentrate in the hands of a few—and the ITU's effective maintenance of democratic governance. These perspectives provide a foundation for recommending adjustments to BC's labour relations policies to foster inclusivity and democratic engagement.

2. Understanding the Iron Law of Oligarchy in Labour Relations

The Iron Law of Oligarchy points to the natural concentration of power within organizations, potentially sidelining the wider membership's interests. In the context of labour relations, this dynamic could manifest in union leadership or employer associations, detracting from the broader goals of fairness and representation.

Strategies for Mitigation:

Rotational Leadership Models: Introduce or encourage practices within unions and employer groups that facilitate regular leadership turnover, ensuring fresh perspectives and preventing power consolidation.

Increased Transparency: Strengthen mandates for these organizations to disclose operational and decision-making processes, enhancing member oversight and confidence.

Broadened Participation Platforms: Leverage technology to facilitate wider member engagement in decision-making, ensuring a more representative and inclusive approach.

3. Democratic Practices from the ITU: Applications for Labour Relations

The ITU exemplifies sustained democratic governance through inclusive decision-making, transparency, and equitable power distribution. These practices offer valuable insights for reinforcing democratic principles in BC's labour landscape.

Recommendations:

Consensus-Driven Decision-Making: Encourage or require labour organizations to adopt decision-making processes that prioritize broad consensus over simple majority votes, emphasizing inclusivity and collaboration.

Diverse Representation: Implement guidelines ensuring governance structures within these organizations reflect the full diversity of their membership, including specific provisions for minority and historically underrepresented groups.

Independent Oversight: Establish mechanisms for external review or oversight to ensure adherence to democratic norms and accountability within unions and employer associations.

4. Conclusion

The interplay between the tendencies outlined in the Iron Law of Oligarchy and the democratic resilience demonstrated by the ITU offers valuable lessons for labour relations in British Columbia. By incorporating strategies that promote rotation in leadership, transparency, inclusive participation, and equitable representation, the Labour Relations Act can be refined to better serve the interests of workers, employers, and unions alike.

Appendices

A: Case Studies of Rotational Leadership in Labour Organizations

B: Global Review of Labour Relations Frameworks

C: Technology as a Tool for Democratic Engagement in Unions

D: Ideas and Options for an Independent Oversight Strategy

This briefing suggests a pathway towards more dynamic, fair, and responsive labour relations in BC, emphasizing the need for ongoing dialogue and adaptation to evolving workplace realities. By prioritizing democratic engagement and transparency, the province can foster a labour environment that is both equitable and conducive to economic and social wellbeing.

Appendix A

Case Studies of Rotational Leadership in Labour Organizations

Rotational leadership in labor organizations is a dynamic and increasingly relevant approach to leadership that can offer various benefits, including enhanced member engagement, broader skill development, and improved organizational resilience. This case study will explore the implementation, outcomes, and challenges of rotational leadership within a hypothetical labor organization named "The Union for Worker Empowerment" (UWE), which represents workers across the manufacturing sector.

Background

UWE has traditionally employed a hierarchical leadership structure, with positions held for long terms without regular turnover. This model led to concerns about leadership stagnation, reduced member engagement, and a lack of fresh ideas to tackle emerging challenges in the industry.

Implementation of Rotational Leadership

Recognizing these challenges, UWE's executive committee decided to adopt a rotational leadership model. This model was structured to allow leadership roles to rotate among members on a biennial basis, with the goals of:

- Democratizing Leadership: Ensuring that more members had the opportunity to take on leadership roles.
- Skill Development: Enhancing the skill set of the organization's members by exposing them to leadership roles and responsibilities.

- Innovation: Fostering a culture of innovation and adaptability by bringing in leaders with fresh perspectives regularly.

Strategies for Implementation

UWE implemented several strategies to ensure the successful transition to rotational leadership:

- Training and Development: Prior to implementation, UWE invested in leadership development programs to prepare members for potential leadership roles.
- Clear Transition Processes: UWE established clear processes for leadership transitions, including handover documentation and mentorship programs for incoming leaders.
- Evaluation and Feedback: The organization implemented a robust system for evaluating leadership effectiveness and gathering feedback from members to inform future rotations.

Outcomes

After several cycles of leadership rotation, UWE observed multiple positive outcomes:

- Increased Engagement: Membership engagement increased significantly, with more members expressing interest in participating in the organization's activities and governance.
- Enhanced Resilience: The organization became more resilient to external shocks, as a broader base of members with leadership experience contributed to strategic planning and crisis management.
- Innovation in Strategies: The introduction of fresh perspectives led to innovative approaches to negotiations, member recruitment, and advocacy campaigns.

Challenges

Despite its successes, the rotational leadership model also presented challenges:

- Consistency in Leadership: Some members expressed concerns about the lack of consistency in leadership, which occasionally disrupted long-term strategic initiatives.
- Learning Curve: New leaders faced a steep learning curve, which sometimes led to inefficiencies or delays in decision-making processes.

Conclusion

UWE's experience with rotational leadership highlights the potential benefits and challenges of this model in labor organizations. While it fostered greater engagement, resilience, and innovation, it also required careful implementation and support structures to mitigate the challenges of consistency and learning curves. This case study suggests that with thoughtful planning and support, rotational leadership can be a powerful model for labor organizations seeking to empower their members and adapt to the changing landscape of work.

Appendix B

Global Review of Labour Relations Framework: Envisioning Increased Democracy through Historical Insights and Union Practices

Abstract

This essay examines global labor relations frameworks with an emphasis on enhancing democratic practices within these systems. It draws lessons from the "Iron Law of Oligarchy" and the enduring democratic traditions of the International Typographical Union (ITU) to propose pathways towards more participative and equitable labor relations. By understanding historical and contemporary challenges to democracy within labor organizations, this analysis seeks to contribute to the development of labor relations frameworks that are both resilient and inclusive.

Introduction

Labor relations frameworks are critical to ensuring equitable and productive interactions between employers and employees. However, the quest for more democratic practices within these frameworks often encounters significant challenges, as highlighted by Robert Michels' "Iron Law of Oligarchy." This principle suggests that all forms of organization, regardless of how democratic they are in the beginning, inevitably evolve into oligarchies. Yet, the history of the International Typographical Union offers a compelling counter-narrative, demonstrating the possibility of sustained democracy within labor organizations. This essay explores how the lessons from the ITU's democratic resilience, alongside insights from the Iron Law of Oligarchy, can inform the development of more democratic labor relations frameworks globally.

Literature Review

The Iron Law of Oligarchy asserts that leadership within large organizations tends to consolidate power, leading to oligarchic structures. This concept has profound implications for labor relations, suggesting inherent limits to the democratization of labor organizations. Conversely, the ITU's history provides an example of a labor union maintaining democratic practices over an extended period, challenging the inevitability of oligarchic drift. The union's mechanisms for ensuring member participation, transparency, and accountability offer valuable lessons for contemporary labor relations frameworks.

Methodology

This analysis employs a qualitative approach, examining historical case studies and theoretical perspectives on organizational democracy. It focuses on the structural and cultural elements that have supported or undermined democratic practices within labor organizations, with particular attention to the ITU as a model of democratic resilience.

Analysis

The comparative analysis identifies key factors contributing to the longevity of democracy within the ITU, including robust mechanisms for member participation, a culture of transparency, and effective checks on leadership power. These elements counteracted the forces driving towards oligarchy, as outlined by Michels. Furthermore, the analysis reveals common challenges faced by labor organizations in maintaining democratic governance, such as the tension between efficiency and participative decision-making, and the impact of external economic and political pressures.

Lessons for Enhancing Democracy in Labor Relations

Drawing on the ITU's experience and the insights of the Iron Law of Oligarchy, several strategies emerge for enhancing democracy within labor relations frameworks:

- Institutionalizing Participation: Developing structures that facilitate active participation by all members in decision-making processes.
- Promoting Transparency: Ensuring that information about organizational decisions and operations is readily available to all members.
- Balancing Efficiency and Democracy: Finding operational models that allow for efficient management while preserving democratic principles.
- Strengthening Accountability: Implementing mechanisms for holding leaders accountable to the membership, including regular elections and the possibility of recall.
- Fostering a Democratic Culture: Cultivating values and norms that support democratic engagement and mutual respect among members.

Conclusion

The global review of labor relations frameworks, with the backdrop of the Iron Law of Oligarchy and the democratic legacy of the International Typographical Union, underscores the potential for more democratic practices in labor organizations. Despite the challenges identified by Michels, the ITU's experience demonstrates that sustained democracy is possible with deliberate structural and cultural commitments. By incorporating these lessons, contemporary labor relations frameworks can move towards greater democracy, ensuring that they not only respond to the needs of workers but also empower them as active participants in the governance of their organizations. This shift towards increased democracy within labor relations has the potential to contribute to more equitable and resilient societies.

Appendix C

Technology as a Catalyst for Democratic Engagement in Labor Unions

Introduction

The concept of widespread democratic participation within labor unions confronts a perennial challenge, eloquently encapsulated by the "Iron Law of Oligarchy." This principle, proposing that all organizations inevitably gravitate towards oligarchic governance, raises critical questions about the feasibility of sustained democratic engagement in labor unions. However, the historical precedent set by the International Typographical Union (ITU) demonstrates a successful deviation from this trend. In the contemporary context, technology emerges as a potent tool to further democratize union activities, potentially mitigating the constraints identified by Michels' law.

The Historical Paradigm and Technological Potential

The "Iron Law of Oligarchy," as articulated by Robert Michels, suggests a natural consolidation of power within the hands of a few leaders, a phenomenon observable across various organizations, including labor unions. Contrastingly, the ITU's prolonged democratic governance serves as a testament to the potential for sustained member participation. Drawing inspiration from the ITU’s achievements, this essay proposes leveraging technology to enhance democratic engagement within unions, circumventing the traditional barriers to widespread member involvement.

Leveraging Technology for Democratic Ends

Technology presents unparalleled opportunities for enhancing democratic practices within unions through several innovative approaches:

- Digital Voting Systems: Facilitating secure and accessible online voting mechanisms can significantly increase participation rates, ensuring that every member's voice is counted, regardless of their geographical location or work schedule.
- Virtual Meetings: Implementing video conferencing tools can democratize access to union meetings, enabling real-time participation from a diverse membership base and fostering a more inclusive decision-making process.
- Information Dissemination Platforms: Utilizing digital platforms for the swift and transparent communication of union activities, decisions, and debates can cultivate an informed membership, critical for meaningful democratic engagement.
- Interactive Feedback Mechanisms: Developing platforms for real-time feedback and dialogue between the union leadership and the general membership can ensure that leadership remains responsive and accountable to the members' needs and perspectives.

Navigating the Challenges

While the adoption of technology in union operations offers promising avenues for democratic deepening, it is not without its challenges. The digital divide, varying levels of technological literacy among members, and concerns over data privacy and security represent significant hurdles. To effectively harness technology for democratic purposes, unions must:

- Prioritize User-Friendly Design: Ensure that digital tools are accessible and navigable for all members, irrespective of their technological proficiency.

- Invest in Digital Literacy: Implement educational programs aimed at enhancing members' digital skills, ensuring equitable access to technological platforms.
- Adopt Hybrid Models: Balance digital and traditional methods of engagement to accommodate diverse preferences and capabilities among the membership.
- Ensure Robust Security Measures: Adopt stringent data protection protocols to safeguard members' privacy and maintain trust in digital platforms.

Conclusion

The integration of technology into union operations holds the potential to significantly advance democratic engagement, challenging the inevitability of oligarchic drift as suggested by the "Iron Law of Oligarchy." By drawing lessons from the historical resilience of the ITU's democratic practices and thoughtfully implementing technological solutions, labor unions can foster a more inclusive, participatory, and responsive organizational structure. In the quest for enhanced democracy within unions, technology not only offers a tool for engagement but also serves as a bridge towards a more empowered and active membership.

Appendix D

A Path to an Independent Oversight System and the Framework for Accountability

Implementing an independent oversight framework within the context of British Columbia's Labour Relations Act can significantly enhance the transparency, accountability, and democratic governance of labour organizations. Independent oversight involves establishing external bodies or mechanisms that monitor, review, and report on the practices and decisions of unions and employer associations. This section elaborates on the framework and options for realizing such oversight.

Framework for Independent Oversight

Establishment of Independent Oversight Bodies:

Create a Labour Relations Oversight Commission (LROC) tasked with monitoring compliance with the Labour Relations Act, ensuring transparency and fairness in union and employer association operations. The LROC should have a balanced representation, including labour law experts, representatives from worker and employer groups, and public interest members to ensure a broad perspective.

Mandate and Powers:

The LROC's mandate would include reviewing financial records, decision-making processes, and compliance with democratic principles within labour organizations. It should have the authority to conduct audits, investigations, and even mediate disputes when necessary.

Reporting and Transparency

The LROC would produce annual reports on its findings regarding the state of labour relations practices in BC, including specific recommendations for improvements. Reports should be made publicly available to ensure transparency and to foster a culture of accountability.

Options for Implementing Independent Oversight

Legislative Changes

Amend the Labour Relations Act to establish the LROC as an official body with clear mandates, powers, and reporting responsibilities. Define specific criteria and benchmarks for transparency, democratic governance, and fair practices that labour organizations must meet.

Voluntary Compliance Agreements

Encourage unions and employer associations to enter into voluntary compliance agreements with the LROC, committing to uphold certain standards of transparency and democracy. Such agreements could be incentivized through recognition programs or public endorsements from the government.

Collaboration with Existing Regulatory Bodies

Partner with existing regulatory bodies, such as the BC Labour Relations Board, to incorporate independent oversight functions into their current roles. This approach leverages existing infrastructure and expertise, potentially reducing the cost and complexity of establishing new mechanisms.

Public Engagement and Reporting Platform

Develop an online platform that allows workers and the public to report concerns directly to the LROC. The platform should facilitate anonymous submissions to protect the identities of those reporting issues and encourage candid feedback.

Periodic Review and Adaptation

Implement a mechanism for periodic review of the LROC's effectiveness and the overall independent oversight framework. This ensures the system remains responsive to changing labour dynamics and can be adapted based on real-world outcomes and feedback.

Conclusion

The introduction of an independent oversight framework into BC's labour relations landscape presents a promising approach to reinforcing democratic governance, transparency, and accountability. By considering various options for implementation, from legislative changes to collaborative approaches with existing bodies, BC can create a robust system that upholds the principles of fair and equitable labour practices. This framework not only benefits workers and employers but also contributes to the overall health of the province's labour market.

Summaries of the Two Main Ideas being Presented:

"The Iron Law of Oligarchy"

The "Iron Law of Oligarchy" is a principle introduced by German sociologist Robert Michels in his 1911 study, "Political Parties." It posits that all complex organizations, regardless of how democratic they are in their initial stages, inevitably evolve into oligarchies. This means that the organizational leadership and decision-making processes become concentrated in the hands of a

small group of elites, diminishing the democratic participation of the general membership. Michels argued that this concentration of power is an inherent aspect of organizational dynamics, driven by the need for efficiency, the specialization of roles, and the leadership's interests in maintaining their authority and control. The Iron Law of Oligarchy suggests a fundamental challenge to sustaining democracy within large and complex organizations, including political parties, labor unions, and corporations, highlighting the tension between the ideals of democratic governance and the practical realities of organizational administration.

Learning about democracy from the International Topographers Union

The International Typographical Union (ITU) was established in 1852 in the United States and is often cited as one of the oldest and most enduring examples of democratic governance within a labor union. The ITU represented workers in the printing and typesetting industries, a sector that experienced significant technological and industrial changes over the union's existence. Despite the challenges these changes posed, the ITU maintained a robust democratic system that distinguished it from many other labor organizations, particularly in light of the "Iron Law of Oligarchy," which suggests that all organizations inevitably develop oligarchic structures.

The ITU's democratic system was characterized by several key features:

- Regular Elections: The ITU conducted regular, competitive elections for leadership positions, ensuring that members had a voice in choosing their representatives and could hold them accountable.
- Decentralization: Power within the ITU was distributed across various local unions and levels of governance, preventing the concentration of power in a central body and ensuring that local chapters had autonomy and influence.

- Transparency and Communication: The union emphasized open communication and transparency in its operations, with regular publications and meetings to keep members informed about union activities, financial status, and decision-making processes.
- Member Participation: The ITU encouraged active participation from its members, not only in elections but also in decision-making processes, policy formulation, and union activities. This inclusive approach fostered a sense of ownership and engagement among members.
- The ITU invested in the education and training of its members, both in terms of their trade skills and in understanding the principles of unionism and democratic participation. This helped cultivate a well-informed and capable membership.
- The democratic system of the ITU contributed to its longevity and adaptability, allowing it to navigate the shifts within the printing industry and labor movement over decades. Its history offers valuable lessons on the potential for sustaining democratic governance within labor unions and challenging the inevitability of oligarchic tendencies as proposed by the Iron Law of Oligarchy.

From:
To: LRC Review LBR:EX; Ralston.MLA, Bruce LASS:EX; Minister, FOR FOR:EX
Subject: Submission to Review Board
Date: February 28, 2024 10:37:15 AM

Hello Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

I urge you to recommend to the B.C. Government that it expand the successor rights and protection that were included in the 2020 Labour Code updates but currently only apply to selected industries. Expansion to other industries would contribute to "providing stable labour relations and supporting the exercise of collective bargaining rights," as stated in Minister Bains' 2022 Mandate Letter.
The entertainment industry needs this protection as contract flipping has happened to us in the past and threatens us still as it is being used increasingly throughout North America as a means of preventing or removing union representation.

Contract-flipping to remove the union has happened to us before (Rogers Arena). I was an employee for Nasco at that time, the moment we unionized Rogers cancelled the contract.

Without this protection, as it stands now, if Rogers current labour supplier, or the Arena itself, were to become unionized, they could just get a new contractor, who would hire the same people. The City could also contract out theatre work, as it has threatened to do in the past.

Most of us depend on work on a casual basis and so are part of the vulnerable "gig economy," although we mostly work as employees, not contractors. Many of us in the industry, working at and supplying some very large venues, do not have the benefit of union jurisdiction. Others, working at unionized venues know that they might find their jobs contracted out to non-union supplier.
Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.
--... ...--

Scott Martin

From:
To: LRC Review LBR:EX
Subject: Labour Relations
Date: February 28, 2024 11:19:32 AM

Labour Relations Code Panelists:

I am a member of The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) Local 118. We work as stagehands and technicians on live theatre, stage and concert productions in the Vancouver area.

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The entertainment industry needs this protection as contract flipping has happened to us in the past and threatens us still as it is being used increasingly throughout North America as a means of preventing or removing union representation.

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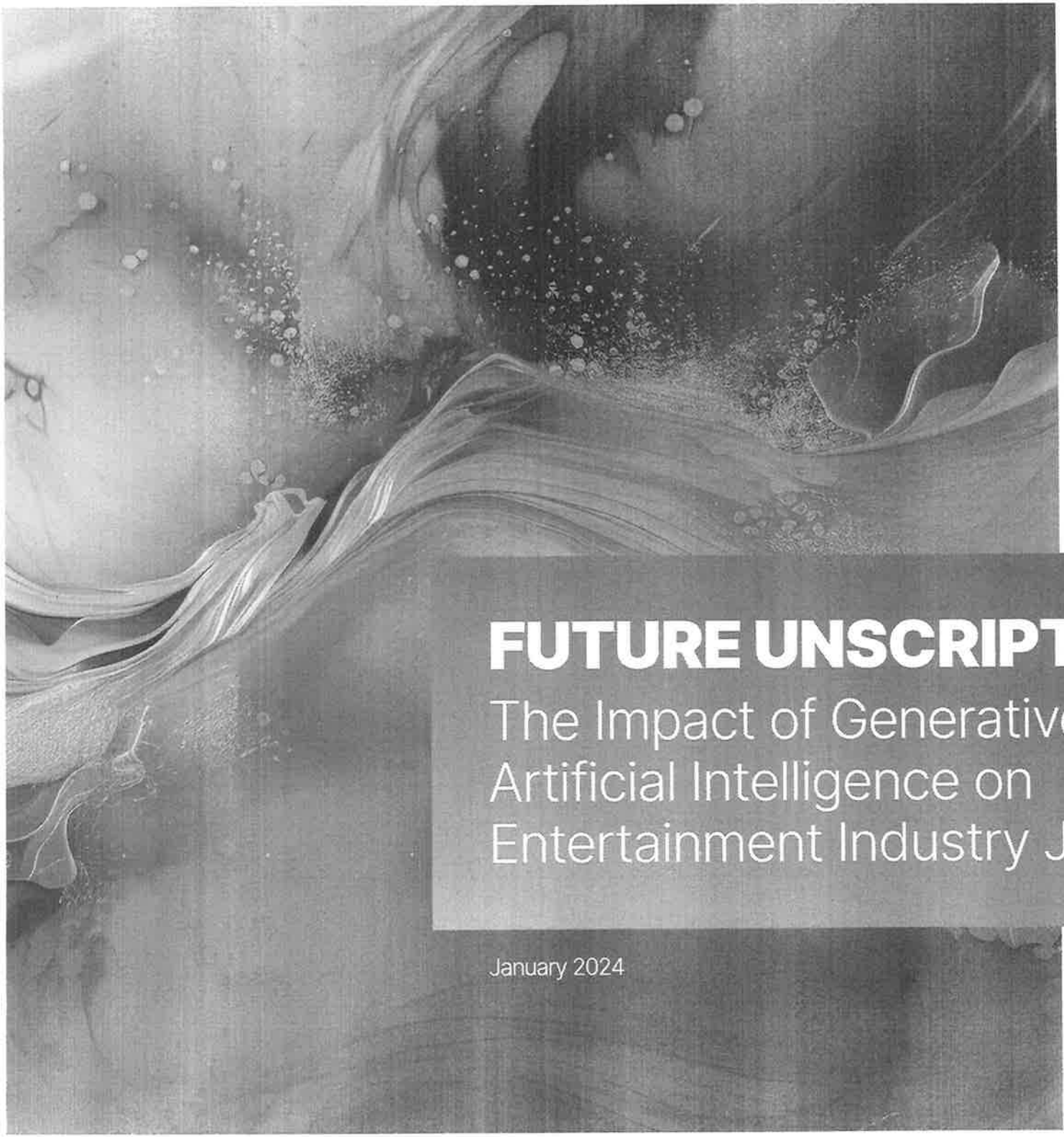
Workers should not fear loss of their jobs, or reduced wages and benefits through contact flipping, especially when considering organizing toward new union certification.

Thank you for your work.
Skai Fowler

From:
To: LRC Review LBR:EX
Subject: Successor Rights/ Contract Flipping
Date: February 27, 2024 9:12:42 AM

Hello,
As you undergo this review, I urge you to recommend the expansion of successor rights to help protect workers in the Entertainment Industry.
Most of the employment in the entertainment is on an on-call (gig) basis which makes workers particularly vulnerable to the actions of their employers.
Contract Flipping has occurred in the entertainment industry in the past and has been used to strip workers of union representation before rehiring these same workers.
Expanding successor rights to the entertainment industry will serve to protect hard bargained working conditions for hundreds of workers in the province as well as recognizing the importance of the entertainment industry to the province.
Best Regards,
Timothy Hastings

Addenda



FUTURE UNSCRIPTED:

The Impact of Generative Artificial Intelligence on Entertainment Industry Jobs

January 2024

CVLECONOMICS

FUTURE UNSCRIPTED:

The Impact of Generative Artificial Intelligence on Entertainment Industry Jobs

Executive Summary

In mid-2023, just months after OpenAI released ChatGPT, the Writers Guild of America (WGA) and Screen Actors Guild–American Federation of Television and Radio Artists (SAG-AFTRA) voted to go on strike. A point of contention for both unions lay in the impact that artificial intelligence (AI) would have on the nature of work and job security as the technology becomes more powerful and sophisticated.

Many companies were already drawing on original content produced by writers to train developing generative artificial intelligence (GenAI) programs and/or using the likenesses of actors to generate digital replicas and character designs. Without strong protections in place, striking workers could envision a world in the not-too-distant future where their roles would be replaced by GenAI technology.

Preface

Discussions about the impact of technology on the labor market usually focus on the creation and elimination of jobs. Since at least the Industrial Revolution, technological advancements have changed how work is done roughly every generation, affecting some sectors more than others.[1] For example, in 1870, the share of Americans working in agriculture was approximately 50%. The introduction of mechanization dropped that number to 41% by 1900; by 2020, agriculture employment accounted for less than 2% of all jobs nationwide. Similarly, automation in the 1980s played a large role in the decline of U.S. manufacturing jobs. During the postwar years, employment in the manufacturing sector hovered around 30%; today it is closer to 6%.

With the emergence of generative artificial intelligence (GenAI), we come to another critical inflection point in the story of jobs and technology. The entertainment industries are in a period of significant uncertainty, where the nature of work is rapidly — and in many cases, profoundly — changing at an unprecedented rate.

The questions posed by GenAI are consequential: How is the technology being used? How will it be used moving forward? What is the impact on creative workflows and industry offerings? Will these technologies prove to be a productivity boom for creative workers? Or will they increasingly replace the need for creative workers in the process?

In a survey conducted between November 17 and December 22, 2023, 300 C-Suite leaders, senior executives, and mid-level managers across six industries in the entertainment sector were given the opportunity to provide their input. Questions centered on current and anticipated roles of GenAI, the technology's effects on tasks and responsibilities, the creation and/or replacement of job roles and titles, and the perceived benefits and challenges of GenAI implementation.

As the pace of change will only continue to accelerate in 2024, it is our goal at CVL Economics to cut through the hype and ground the conversation in data. This report, the first in a series of GenAI's impact on the entertainment industries, is a step in that direction.

[1] David Rotman, "How Technology Is Destroying Jobs," MIT Technology Review, June 12, 2013, https://www.technologyreview.com/2013/06/12/178008/how-technology-is-destroying-jobs/.

Although the latest round of contract negotiations with the Alliance of Motion Picture and Television Producers (AMPTP) favored WGA and SAG-AFTRA members in the end, the uncertainty about GenAI's impact on the film and television industry — and increasingly, all entertainment industries — remains.

What *is* certain is that GenAI technology is here, and it will continue to be refined and leveraged over time. To be sure, public policy and organized labor will play critical roles in shaping the operating environment and establishing safeguards. In the short to medium term, though, the decisions about what GenAI technology will be deployed and how it will be used will be led by industry leaders and managers. At a time when several entertainment industries are facing challenges, the desire to increase productivity, cut costs, and identify new revenue streams will be top of mind. But such decisions carry weight. Riot Games, Unity Software, Amazon MGM Studios, Pixar, and Universal Music Group all announced layoffs within the first few weeks of 2024,[2] and further job cuts are expected in the months ahead.[3]

Understanding how creative industry executives are currently thinking about GenAI integration can provide some insight into the implications for the creative workforce. In a survey conducted between November 17 and December 22, 2023, 300 C-Suite leaders, senior executives, and middle managers across six entertainment industries were asked to share their perspectives across multiple dimensions.[4] Whether their responses are encouraging or sobering may be a matter of opinion, but they do reflect an important reality. Creative industry leaders are largely embracing GenAI technology, and most recognize that operational benefits in the future will come at a cost to many creative workers.

[2] Christi Carras, Sarah Parvini, and J. Clara Chan, "Entertainment companies face tidal wave of layoffs in rocky start to new year," The Los Angeles Times, January 12, 2024, https://www.latimes.com/entertainment-arts/business/story/2024-01-12/entertainment-layoffs-pixar-amazon-mgm-twitch-discord-umg and Cecilia D'Anastasio, "Tencent's Riot Games Cuts 530 Jobs, Saying It Has Lost Focus," Bloomberg, January 22, 2024, https://www.bloomberg.com/news/articles/2024-01-22/tencent-s-riot-games-to-lay-off-530-people-about-11-of-staff.

[3] Jack Kelly, "Unlike Last Year's Large-Scale Layoffs, 2024 Sees Small and Steady Job Cuts—Here's Who's Laying off." Forbes, January 19, 2024. https://www.forbes.com/sites/jackkelly/2024/01/19/unlike-last-years-large-scale-layoffs-2024-sees-small-and-steady-job-cuts-heres-whos-laying-off/?sh=35d2a22f5f80.

[4] These industries are: (1) Film, Television, and Animation; (2) Music and Sound Recording; (3) Gaming; (4) Media Streaming Distribution Services, Social Networks, and Content Providers; (5) Radio and Television Broadcasting; and (6) Newspaper, Periodical, Book, and Similar Publishing.

Key Survey Findings

72%

Seventy-two percent (72%) of firms surveyed can be considered early adopters of GenAI programs.

Twenty-five percent of creative businesses already have a GenAI program in place, compared to 3.9% of businesses economy-wide. An additional 47% indicated they are in the planning or early stages of implementing at least one GenAI program.

75%

Three-fourths (75%) of survey respondents indicated GenAI tools, software, and/or models had supported the elimination, reduction, or consolidation of jobs in their business division.

At the same time, most executives and managers indicate GenAI has already led to the creation of new job titles and roles in their organization and anticipate GenAI technology will be responsible for the creation of new job opportunities. Whether these new jobs will offset inevitable job losses is not clear.

36%

Over a third of respondents (36%) who currently have or are in the early stages of developing a GenAI capability reported that GenAI had reduced the need for certain skills for daily tasks and responsibilities among their staff.

Roughly 6 in 10 early GenAI adopters reported that GenAI "increased efficiency in routine tasks" and "enhanced quality of routine or repetitive tasks in their organization." Half reported that GenAI implementation had introduced new tasks and responsibilities, though the number and nature of these tasks and responsibilities were not specified.

57%

Over half of respondents (57%) reported employees raising concerns regarding the ethical implications of using GenAI in their work.

Asked to name their top three concerns, employees cited issues related to the dangers of current GenAI systems being "stochastic parrots" (42% of the time);[5] a lack of transparency over GenAI decision-making processes and output (38%); and misinformation, content falsification, and deepfakes (36%).

90%

Over 90% of business leaders foresee GenAI playing a larger role in the entertainment industries, with 26% indicating it would play a significantly larger role over the next three years.

That said, only 26% of respondents felt their organization's workforce was fully prepared for the integration of GenAI into their workflows.

47%

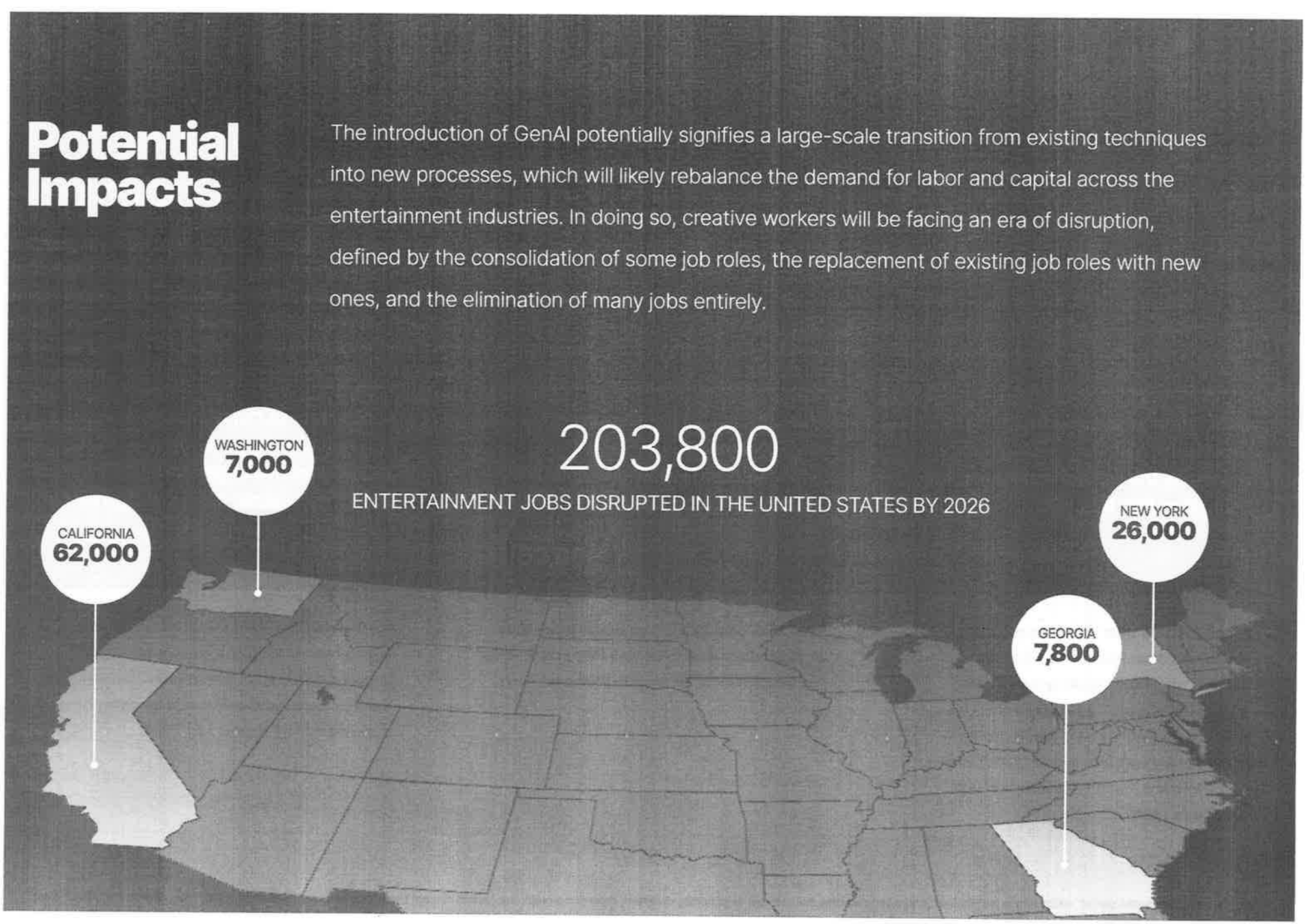
Almost half (47%) of business leaders felt that over the next three years, GenAI will be effective in generating 3D assets as well as realistic sound design for film, television, and video games.

Another 44% believed GenAI would be able to generate realistic and convincing foreign-language dubbing for film or television dialogue, and 39% believed GenAI would be generating music mixes and masters by 2026.

[5] The term "stochastic parrot" refers to the fact that large language models may be able to generate coherent, convincing texts, but cannot discern the actual meaning of the text itself. They effectively "parrot" back information they are fed.

Potential Impacts

The introduction of GenAI potentially signifies a large-scale transition from existing techniques into new processes, which will likely rebalance the demand for labor and capital across the entertainment industries. In doing so, creative workers will be facing an era of disruption, defined by the consolidation of some job roles, the replacement of existing job roles with new ones, and the elimination of many jobs entirely.



Almost two-thirds of the 300 business leaders surveyed expect GenAI to play a role in consolidating or replacing existing job titles in their business division over the next three years. This would translate to approximately 203,800 payroll jobs being adversely affected in the United States, over half of which would be in four states: California (accounting for 28% of all displaced creative industry jobs), New York (14%), Georgia (4%), and Washington (3%).[6]

Since this figure does not include the effect on gig workers and freelancers, who are not tracked as robustly by U.S. administrative data and surveys, the actual number of displaced creative jobs is in fact likely to be much higher. Of the firms surveyed that primarily employ gig workers or freelancers, nearly 80% are early adopters of GenAI. Non-payroll workers are disproportionately vulnerable to contract work displacement compared to the population of creative workers overall. And given that the entertainment industries on average employ a greater share of gig workers compared to other sectors, the total number of affected jobs will likely be even more significant.[7]

Just as different types of workers will face different levels of exposure to GenAI, the extent of job consolidation, replacement, or elimination will vary from one creative industry to the next. This report focuses on three entertainment industries in particular: Film, Television, and Animation; Music and Sound Recording; and Gaming.

[6] This assessment extends previous research on occupational task exposure to GenAI. The existing literature is neutral on the potential for GenAI to substitute or complement human labor in key tasks. This report uses the term "disruption" to incorporate industry leader expectations for consolidation or replacement of certain tasks into the assessment of occupational/sectoral exposure to GenAI over the next three years.

[7] Official U.S. administrative data sets like the Quarterly Census of Employment and Wages (QCEW) do not track gig work employment. The Current Population Survey (CPS) does include self-employed persons, yet its small sample size is not suitable for detailed analysis and lacks sufficient coverage of secondary sources of income.

Film, Television, and Animation Industry

Concentrated in California, New York, Georgia, and New Mexico, the U.S. Film, Television, and Animation industry employs almost 550,000 workers and is the largest of the creative sectors included in the survey. The potential for GenAI-induced job disruption is significantly higher given the many ways the technology is being deployed across multiple job roles.

ADOPTION

Over two-thirds (68.7%) of firms in the Film, Television, and Animation industry are early adopters of GenAI. Firms primarily engaged in post-production activities are implementing GenAI programs more than those that focus on other production stages. For the early GenAI adopters in Film, Television, and Animation, roughly 44% are implementing GenAI technology to assist in generating 3D models and 39% in generating character and environment design tasks. Thirty-seven percent are using the technology to assist in voice generation and cloning and compositing tasks.

DISRUPTION

About 21.4% of Film, Television, and Animation jobs (or approximately 118,500 jobs) are likely to have a sufficient number of tasks affected to be either consolidated, replaced, or eliminated by GenAI in the U.S. by 2026. As the state with the largest industry employment and industry concentration (or location quotient), California will be impacted the most (affecting 39,500 jobs) both in total job disruption nationwide and with respect to its own economy. New York also has a relatively high employment concentration and will see 15,100 film, television, and animation jobs affected over the next three years.

JOB ROLES

Roughly one in three Film, Television, and Animation business leaders surveyed predict job displacement over the next three years for Sound Editors and 3D Modelers. Job titles such as Sound Designer, Compositor, and Graphic Designer were flagged as vulnerable by roughly 25% of respondents. Approximately one third placed Re-Recording Mixers, Broadcast Technicians, and Audio and Video Technicians in this category as well, with another 15% predicting job displacement for Storyboard Artists, Illustrators, Look/Surface/Materials Artists, and Animators by 2026.

555,000
U.S. Film, Television, and Animation Jobs (2023)

68.7%
Share of GenAI Early Adopters (2023)

118,500
U.S. Film, Television, and Animation Jobs Disrupted by GenAI (by 2026)

21.4%
Share of U.S. Film, Television, and Animation Jobs Disrupted by GenAI (by 2026)

Music and Sound Recording Industry

The Music and Sound Recording industry has weathered several technology disruptions over the past 20 years, ranging from the rise of digital downloads, the explosion of illegal file-sharing, to the emergence of music streaming services. The impact of GenAI is likely to usher in another period of transition, but the impact on the existing 21,300 jobs is projected to be smaller relative to the Film, Television, and Animation industry.

ADOPTION

The Music and Sound Recording industry has been slower at adopting GenAI programs than other entertainment industries. Only half of firms in Music and Sound Recording are early adopters of GenAI, with most adopters primarily operating in pre-production. Most early adopters implement GenAI technology to assist with voice generation and cloning (57%) and music generation and recording (52%). About half use GenAI programs to generate lyrics and about 45% and 40% of respondents use GenAI for mastering and mixing, respectively.

DISRUPTION

Since fewer firms have adopted GenAI in Music and Sound Recording, the proportion of jobs with a sufficient number of tasks impacted is much lower than in other entertainment industries. About 8.4% of industry jobs will disrupted by 2026, which translates to about 1,800 industry jobs across the United States. Most jobs will be displaced in California (470 jobs), but Tennessee (320 jobs) has the largest industry location quotient, which means its economy will feel the effects of displacement more acutely.

JOB ROLES

Fifty-five percent (55%) of business leaders surveyed foresee Sound Designers facing the greatest degree of displacement over the next three years. A little over 40% of respondents considered Music Editors, Audio Technicians, and Sound Engineers to be vulnerable as well, and roughly 33% expect Songwriters, Composers, and Studio Engineers to experience similar impacts over the next three years.

21,300
U.S. Music and Sound Recording Jobs (2023)

53.3%
Share of GenAI Early Adopters (2023)

1,800
U.S. Music and Sound Recording Jobs Disrupted by GenAI (by 2026)

8.4%
Share of U.S. Music and Sound Recording Jobs Disrupted by GenAI (by 2026)

Gaming Industry

At 390,500 jobs, the Gaming industry has been at the forefront of technological advancement for decades now, and it currently plays an outsized role in the development and deployment of GenAI technology. Yet this does not mean the industry is immune to job disruption. Many of the same tasks that are likely to be completed by GenAI technology in the Film, Television, and Animation industry are integral to the Gaming industry as well.

ADOPTION

Out of the entertainment industries analyzed in this report, the Gaming industry has the largest share of early adopter firms. Nearly 90% of firms in the Gaming industry have adopted or are in the process of adopting GenAI programs. GenAI use is common across all stages of production (pre-production, production, and post-production), with over three-fourths of firms being early adopters of GenAI within each stage.

390,500
U.S. Gaming Industry Jobs (2023)

DISRUPTION

Despite having the highest degree of GenAI integration out of all the entertainment industries, Gaming industry leaders do not foresee GenAI consolidating or replacing jobs within the next three years to the same extent as the other entertainment industries. It is important to emphasize that Gaming is at the forefront of technological advancement, and assessing the degree to which existing workers are insulated from having their roles minimized or eliminated is difficult to predict three years out. Based on survey respondents' expectations, though, approximately 13.4% of Gaming jobs (or 52,400 jobs) will be consolidated, replaced, or eliminated by 2026. Most consolidation, replacement, or elimination will occur in California (19,400 jobs), but Washington (4,600 jobs) has the highest location quotient of gaming jobs.

86.7%
Share of GenAI Early Adopters (2023)

52,400
U.S. Gaming Jobs Disrupted by GenAI (by 2026)

JOB ROLES

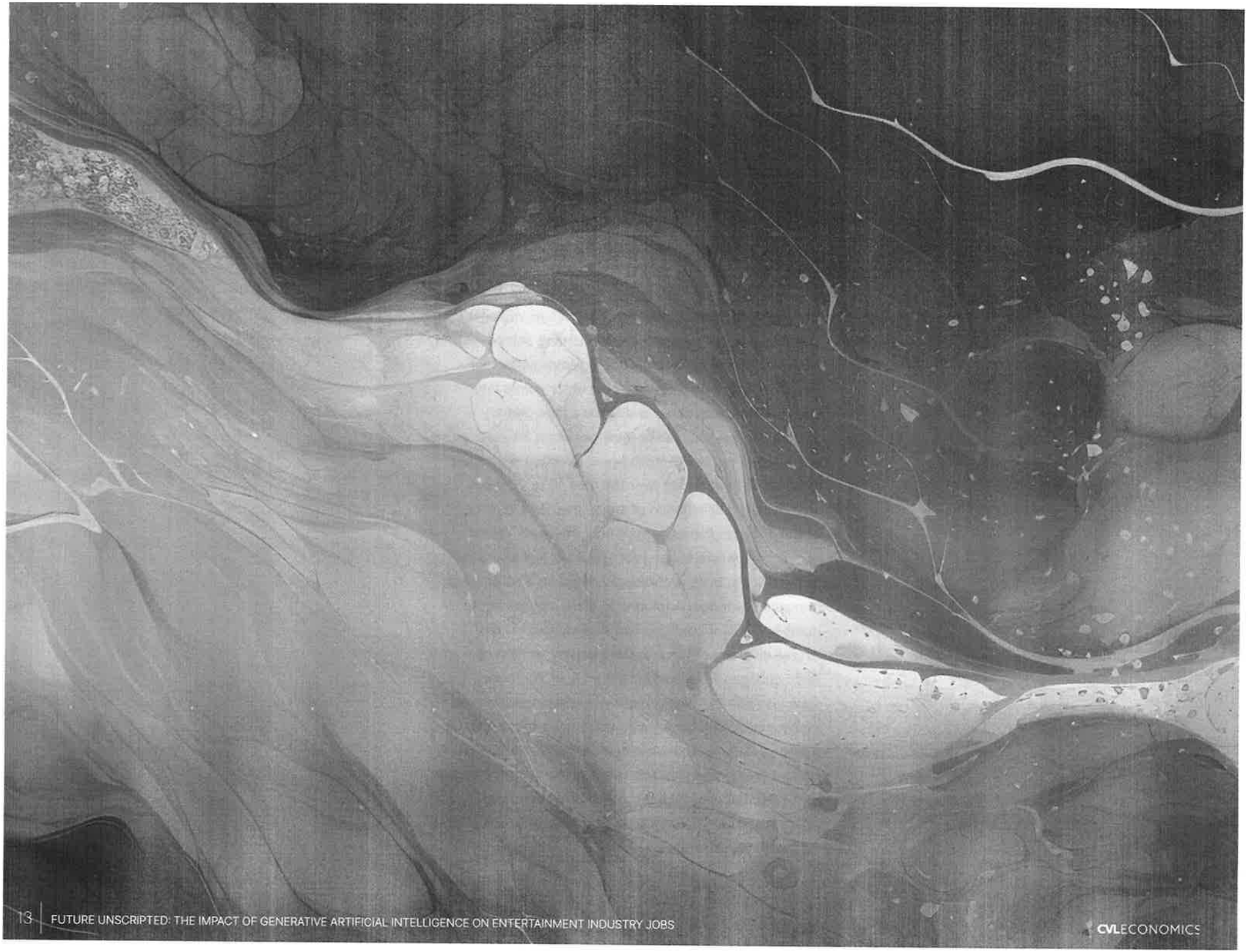
Roughly one in three business leaders predict job displacement over the next three years for Software Developers, Sound Editors, Software Analysts and Testers, and Special Effects Artists. Roughly 20% reported that the job titles of 3D Artist, Game Designer, UI/UX Designer, and Video Game Tester would be vulnerable. Respondents also expected GenAI to play a larger role in tasks like generating 3D modeling (55% of respondents), generating concept art and visual development (40%), and generating sound design, voice generation, and cloning (37%). About 28% of businesses surveyed use GenAI in animation, rigging, and motion capture; 27% in lighting and texturing; and 22% in storyboarding.

13.4%
Share of U.S. Gaming Jobs Disrupted by GenAI (by 2026)

Looking Ahead

The actual net impact on jobs in the wake of GenAI will not be known for some time. But aside from the displacement we can expect to see over the next few years, there are longer-term considerations to keep in mind.

The jobs most susceptible to consolidation, replacement, or elimination will be concentrated among entry-level positions. These have rarely been glamorous or high paying jobs, but they have offered entry points into entertainment industries and serve as the primary pipeline to mid- and senior-level positions. Fewer entry points today will mean fewer qualified workers to fill Level 3 vacancies over the next 10 to 20 years. Moreover, the elimination of entry-level jobs in favor of GenAI technologies will not only limit early career workers' exposure to key processes but will also affect their ability to build professional networks and develop domain knowledge. Additionally, a contraction in the number of junior positions has implications for the overall diversity of the creative industry workforce. Such changes will disproportionately affect those from less affluent backgrounds and underrepresented communities who have traditionally used these roles as a means towards economic and career mobility. Limiting opportunity is likely not the intent of the industry leaders surveyed, but without a measured and intentional approach to GenAI integration, this may very well be the future that is generated.



Introduction

The entertainment industries have had to navigate choppy waters since the onset of the Covid-19 pandemic, but 2023 was especially turbulent.

On the one hand, it was a year of major box office successes, epitomized by the cultural phenomenon of "Barbenheimer" and AAA game releases such as *The Legend of Zelda: Tears of the Kingdom*, *Marvel's Spider-Man 2*, and *Super Mario Bros. Wonder*. On the other hand, it was also a year in which layoffs cut deep across gaming companies,[8] music streaming services,[9] radio networks,[10] and mass media companies.[11] The halt in production for the better part of the year meant new film and television commissioning in the U.S. fell to levels actually *lower* than during the pandemic-induced shutdown in Hollywood. With the decline of the linear television sector, creative workers are fighting for protections as industry heads are struggling to find a viable business model in a new media landscape. As one former media executive told Deadline in July of 2023:

> *"None of these businesses are going to look like what linear used to look like. None of these businesses are going to deliver the types of revenue that syndication used to deliver to directors and actors. The difficult question for Hollywood right now is whether the leadership that's in place, the guys who are really competent in managing studios and linear networks and theme parks, are the right people to solve that problem. I think that the uncomfortable truth that's emerging from this standoff between the Screen Actors Guild, the Writers Guild and the studios is that they may not be."* [12]

[8] Ash Parrish, "2023's Great Games Were Overshadowed by a Dark Cloud of Layoffs." The Verge, December 30, 2023, https://www.theverge.com/24009039/video-game-layoffs-2023.

[9] Adam Satariano, "Spotify to Cut 1,500 Jobs after Spending Spree," The New York Times, December 4, 2023, https://www.nytimes.com/2023/12/04/business/spotify-layoffs.html.

[10] Mckenna Oxenden, "NPR Cuts 10% of Staff and Halts Production of 4 Podcasts," The New York Times, March 25, 2023, https://www.nytimes.com/2023/03/25/us/npr-layoffs-podcasts.html.

[11] Todd Spangler, "Layoffs Hit Condé Nast and Vox Media," Variety Daily, November 30, 2023, https://variety.com/2023/digital/news/layoffs-conde-nast-vox-media-1235815307/.

[12] Katie Campione, "Inside the Battle for A New Streaming Residuals Model: Data, Transparency & 'A Fight for Power,'" Deadline, July 27, 2023, https://deadline.com/2023/07/hollywood-strikes-streaming-residuals-fight-actors-writers-1235448649/.

From the perspective of studio executives — and, indeed, business leaders across the entertainment industries — the emergence of generative artificial intelligence (GenAI) provides opportunities to improve productivity, cut costs, and generate content. How this rapidly evolving technology is employed, though, has the potential to redefine the economic landscape, with seismic implications for creative workers. GenAI is both a subset and evolution of what has been referred to as simply "artificial intelligence" (AI) for years. Whereas traditional AI is rules-based and functions along pre-established algorithms, GenAI leverages machine learning to identify patterns among immense data sets to generate "new" content. In addition to appearing in standalone programs, GenAI technologies are being integrated into preexisting consumer-facing and enterprise-level products (such as Firefly in Adobe Photoshop and Stable Diffusion in Houdini), reflecting a trend towards more sophisticated use cases that blurs the lines between human creativity and content generation (Table 1).

GenAI's expansive capabilities are fueled by the vast trove of content available on the internet and other digital platforms, coupled with significant advancements in machine learning, neural networks, and computational power. Not surprisingly, creative workers are concerned on a number of fronts, including copyright infringement, plagiarism, deepfakes, and the loss of intellectual property. Although GenAI-generated content cannot be copyrighted,[13] what kind of content GenAI technologies can legally draw from has not been defined. A group of writers that includes Pulitzer Prize–winning author Michael Chabon, for example, filed a lawsuit last September against OpenAI for allowing its ChatGPT technology to use their works without permission.[14] In a similar case, Getty Images accused Stability AI of illegally scraping millions of licensed images from its library to populate DALL-E datasets.[15] Some companies are attempting to place guardrails around what source content can be used and how content generated by GenAI is used, but such measures have yet to be proven effective. Adobe Stock recently came under fire for allowing photorealistic GenAI-generated deepfakes supposedly depicting events in Gaza, Ukraine, and Maui to appear alongside legitimate photographs; industry attempts to regulate the situation have so far been circumvented.[16] With respect to plagiarism, many creatives are taking matters into their own hands by using tools like Nightshade to corrupt GenAI training data.[17]

These cases point to the ways that GenAI is being regarded more as a substitute for, rather than an amplifier of, the creative worker skill set. In the years it takes to develop a robust regulatory environment, uses of GenAI will continue to spread throughout the entertainment industries and become further integrated into production workflows. This will undoubtedly have an impact on the size and composition of the creative workforce. This study aims to measure that impact.

[13] Kate Knibbs, "Why This Award-Winning Piece of AI Art Can't Be Copyrighted," Wired, September 6, 2023, https://www.wired.com/story/ai-art-copyright-matthew-allen/.

[14] Blake Brittain, "More writers sue OpenAI for copyright infringement over AI training," Reuters, September 11, 2023, https://www.reuters.com/technology/more-writers-sue-openai-copyright-infringement-over-ai-training-2023-09-11/.

[15] Gil Appel, Juliana Neelbauer, and David A. Schweidel, "Generative AI Has an Intellectual Property Problem," Harvard Business Review, April 7, 2023, https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem.

[16] Will Oremus and Pranshu Verma, "These look like prizewinning photos. They're AI fakes," The Washington Post, November 23, 2023, https://www.washingtonpost.com/technology/2023/11/23/stock-photos-ai-images-controversy/. That said, several pieces of proposed Federal legislation are attempting to address this issue. The "AI Labeling Act" would require disclosures for AI-generated image, audio and text content; the "DEEPFAKES Accountability Act" would establish civil and criminal penalties for failing to disclose generation and dissemination of deepfake content; and a related bill, the "Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES)," would protect artists from unauthorized reproduction of their "voice and visual likeness."

[17] Melissa Heikkilä, "This New Data Poisoning Tool Lets Artists Fight Back against Generative AI." MIT Technology Review, October 23, 2023, https://www.technologyreview.com/2023/10/23/1082189/data-poisoning-artists-fight-generative-ai/.

Table 1: GenAI Typologies

	TEXT	AUDIO	VISUAL
DESCRIPTION	Text-oriented GenAI programs help generate, alter, contextualize, or summarize information using text-to-text and text-to-speech prompts. They can be used for administrative purposes (such as generating a summary of a script or generating routine emails) as well as for creative endeavors (like generating a storyboard or storylines). In addition, these technologies are often employed to answer complex or technical questions.	Audio GenAI programs, platforms, and technologies facilitate the manipulation of existing sounds and the development of new ones. Typical use cases include the generation of a new song or melody (text-to-audio) or voice generation for musical, dubbing, or narrative applications (audio-to-audio or text-to-audio). Applications such as Deep Composer, for example, allow users to generate melodies within seconds via a series of prompts.	Visual-based GenAI programs allow users to generate or modify images. Outputs can be "new" works generated from existing assets (text-to-image), alterations or enhancements (image-to-image), or transformations from one medium to another (image-to-video). These technologies make it possible, for example, to upload landscape photos to virtual production screens in seconds or speed up rotoscoping in post-production.
SAMPLE TECHNOLOGY	• ChatGPT • Azure AI • Bard AI • Chatsonic • Storyboard.ai	• Deep Composer • AudioCraft • Stable Diffusion • Jukebox • Dance Diffusion	• DeepDream • PhotoSonic • DALL-E 3 • Midjourney • Big Sleep
SAMPLE TASK APPLICATIONS	• Script Writing • Storyboarding • Task Organization • Task Management • Tools Programming	• Sound Editing • Sound Design • Voice Generation • Voice Cloning • Audio Translation	• 3D Modeling • Storyboarding • Animation • Concept Art • Visual Effects
PROMPT TYPES	• Text-to-Text • Text-to-Speech	• Text-to-Audio • Audio-to-Audio • Speech-to-Audio	• Text-to-Image • Image-to-Image • Image-to-Text
INDUSTRY USAGE*	68.7%	38.0%	76.7%

* Share of businesses in the six entertainment industries surveyed.

Source: CVL Economics Survey (N=300)

TECHNOLOGY INNOVATION AND LABOR MARKETS

Three recent reports provide some high-level insights into how some of these technologies are already having an impact economy-wide: LinkedIn's "Preparing the Workforce for Generative AI: Insights and Implications,"[18] Indeed's "AI at Work Report: How GenAI Will Impact Jobs and the Skills Needed to Perform Them;"[19] and "GPTs are GPTs: An Early Look at the Labor Market Impact Potential of Large Language Models" from researchers at OpenAI, OpenResearch, and the University of Pennsylvania.[20]

According to Indeed's report, Software Development, Media & Communications, and Arts & Entertainment are among the top 20 sectors economy-wide facing exposure to GenAI. OpenAI's analysis addresses industry exposure to language model-based AI technologies specifically. It includes Publishing, Broadcasting, Motion Picture and Sound Recording, and Performing Arts among their top 25, underscoring the broad impact GenAI will have across the entertainment sector. LinkedIn's research offers a more nuanced view by differentiating between augmentation and disruption. The Technology, Information and Media sector — which encompasses the Software and Entertainment industries — ranks highest in total GenAI exposure, suggesting that GenAI is likely to play a significant role both in assisting and potentially displacing traditional roles. Entertainment Providers also appear on the list, with a sizable percentage of the industry experiencing both augmentation and disruption.

These reports reveal a consistent narrative: the television, film, gaming, media, and other entertainment industries all currently face significant GenAI exposure. This trend is particularly noteworthy given that these sectors have not previously ranked highly on automation exposure indices. The nature of creative tasks within these industries has been, until now, largely resistant to the types of automation affecting other sectors. However, with the advent of GenAI, the criteria for job exposure and impact are changing. Tasks that are not necessarily rote or routine are now within the reach of automation due to the capabilities of GenAI technology to generate novel and complex outputs.

[18] Karin Kimbrough and Mar Carpanelli, "Preparing the Workforce for Generative AI: Insights and Implications," LinkedIn Economic Graph, August 23, 2023, https://economicgraph.linkedin.com/content/dam/me/economicgraph/en-us/PDF/preparing-the-workforce-for-generative-ai.pdf.

[19] Annina Hering, "Indeed's AI at Work Report: How GenAI Will Impact Jobs and the Skills Needed to Perform Them," Indeed Hiring Lab, September 21, 2023, https://www.hiringlab.org/2023/09/21/indeed-ai-at-work-report/.

[20] Tyna Eloundou, Sam Manning, Pamela Mishkin, and Daniel Rock, "GPTs are GPTs: An early look at the labor market impact potential of large language models," OpenAI, March 17, 2023, https://openai.com/research/gpts-are-gpts.poisoning-artists-fight-generative-ai/.

Table 2: Sectors, Industries, and Occupations Facing Greatest Exposure to GenAI

GenAI already touches nearly every corner of the economy. Highlighted entries include entertainment occupations and/or industries.

(1) Occupational Groups Facing Highest Exposure to GenAI

1	Software Development
2	IT Operations & Helpdesk
3	Information Design & Documentation
4	Mathematics
5	Legal
6	Accounting
7	Human Resources
8	Media & Communications
9	Marketing
10	Banking & Finance
11	Logistic Support
12	Industrial Engineering
13	Project Management
14	Administrative
15	Scientific Research & Development
16	Arts & Entertainment
17	Civil Engineering
18	Architecture
19	Electrical Engineering
20	Education & Instruction

Source: Indeed Hiring Lab

(2) Industries Facing Highest Exposure to Large Language Models

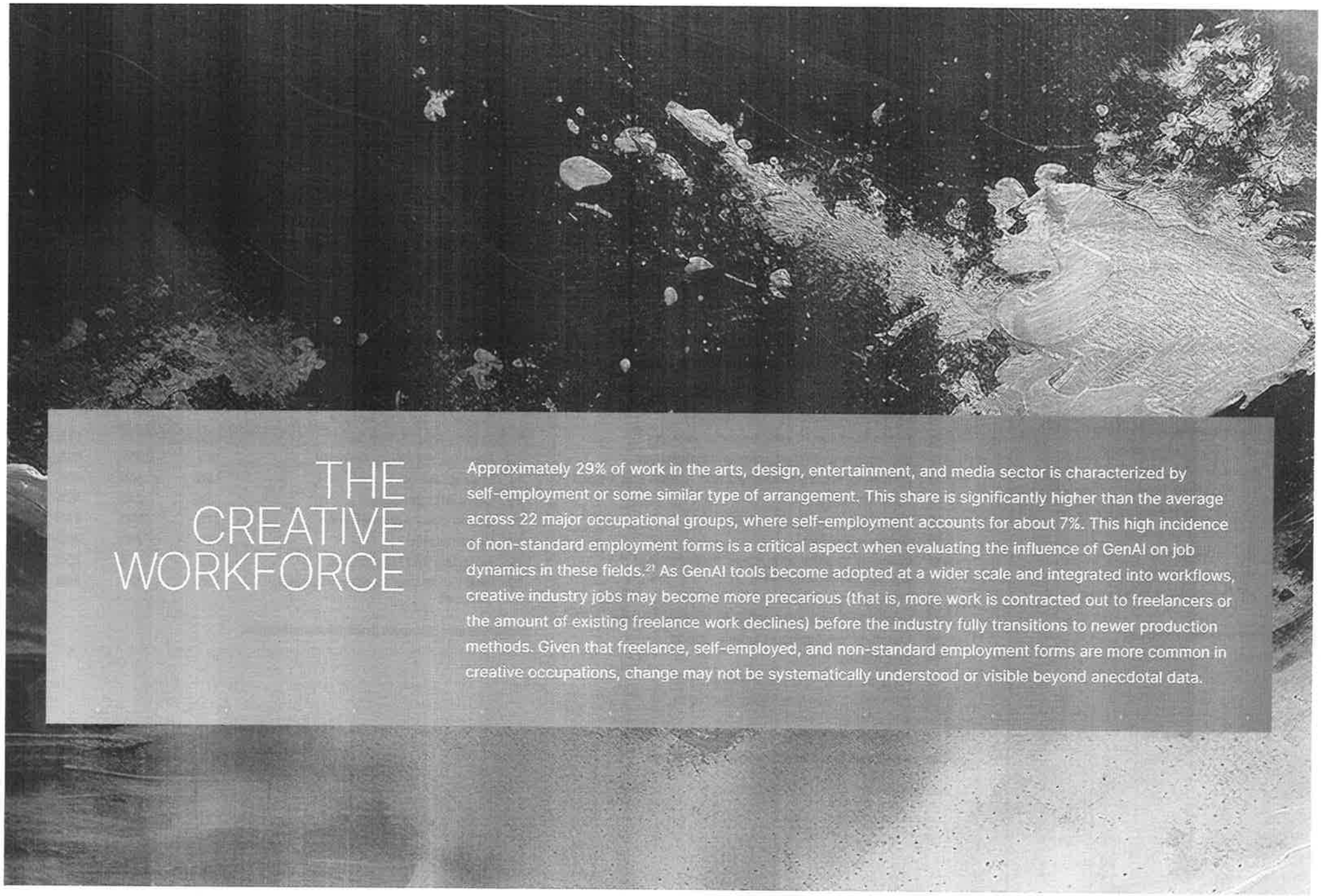
1	Data Processing Hosting and Related Services
2	Other Information Services
3	Publishing Industries (Except Internet)
4	Insurance Carriers and Related Activities
5	Credit Intermediation and Related Activities
6	Securities Commodity Contracts and Other Financial Investments
7	Professional, Scientific, and Technical Services
8	Lessors of Nonfinancial Intangible Assets (Except Copyrighted Works)
9	Broadcasting (Except Internet)
10	Monetary Authorities - Central Bank
11	Funds Trusts and Other Financial Vehicles
12	Management of Companies and Enterprises
13	Wholesale Electronic Markets and Agents and Brokers
14	Telecommunications
15	Electronics and Appliance Stores
16	Nonstore Retailers
17	Religious, Grantmaking, Civic, Professional and Similar Organizations
18	Computer and Electronic Product Manufacturing
19	Motion Picture and Sound Recording Industries
20	Merchant Wholesalers Durable Goods
21	Real Estate
22	Federal, State, and Local Government *
23	Performing Arts Spectactor Sports and Related Industries
24	Health and Personal Care Stores
25	Merchant Wholesalers Nondurable Goods

Source: OpenAI

(3) Share of Sectors Augmented and Disupted by Exposure to GenAI

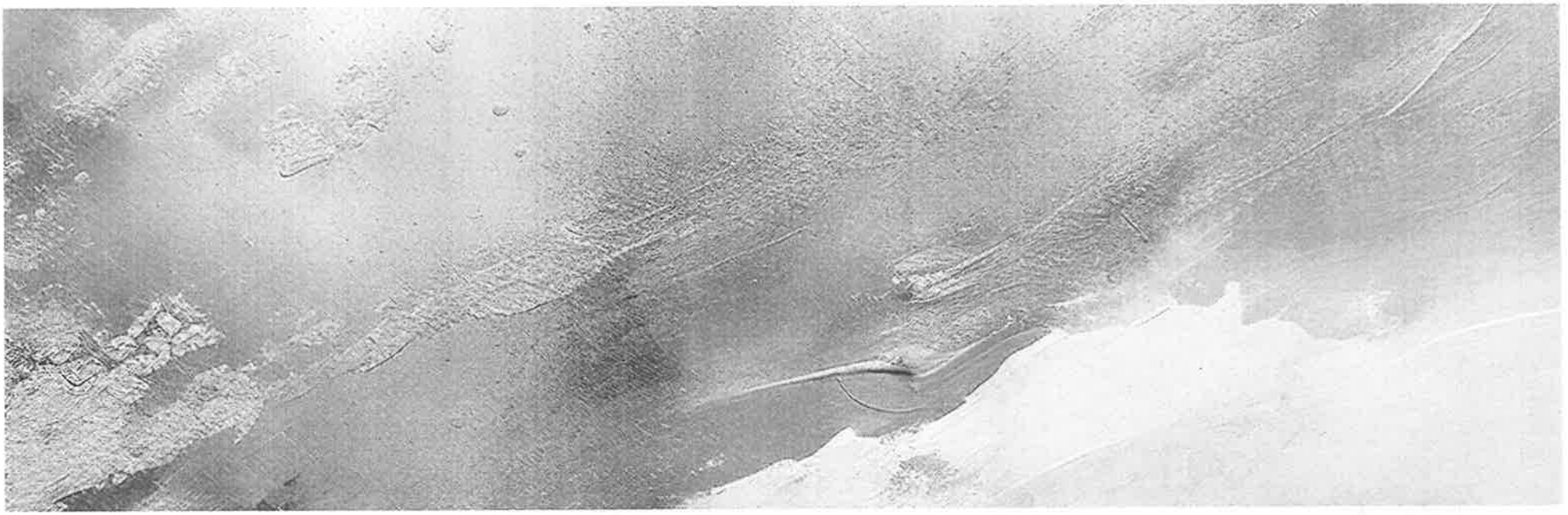
		Augmented	Disrupted	Total Impact
1	Technology, Information and Media	41%	36%	77%
2	Accommodation and Food Services	54%	18%	72%
3	Wholesale	26%	46%	72%
4	Financial Services	21%	50%	71%
5	Professional Services	31%	38%	69%
6	Manufacturing	28%	36%	64%
7	Retail	23%	40%	63%
8	Administrative and Support Services	29%	33%	62%
9	Utilities	25%	37%	62%
10	Oil, Gas, and Mining	21%	33%	54%
11	Transportation, Logistics, Supply Chain and Storage	20%	33%	53%
12	Entertainment Providers	19%	31%	50%
13	Farming, Ranching, Forestry	18%	32%	50%
14	Education	33%	16%	49%
15	Consumer Services	23%	24%	47%
16	Government Administration	21%	23%	44%
17	Construction	15%	25%	40%
18	Hospitals and Health Care	18%	17%	35%
19	Real Estate and Equipment Rental Services	10%	19%	29%

Source: LinkedIn Economic Graph Research Institute



THE CREATIVE WORKFORCE

Approximately 29% of work in the arts, design, entertainment, and media sector is characterized by self-employment or some similar type of arrangement. This share is significantly higher than the average across 22 major occupational groups, where self-employment accounts for about 7%. This high incidence of non-standard employment forms is a critical aspect when evaluating the influence of GenAI on job dynamics in these fields.[21] As GenAI tools become adopted at a wider scale and integrated into workflows, creative industry jobs may become more precarious (that is, more work is contracted out to freelancers or the amount of existing freelance work declines) before the industry fully transitions to newer production methods. Given that freelance, self-employed, and non-standard employment forms are more common in creative occupations, change may not be systematically understood or visible beyond anecdotal data.

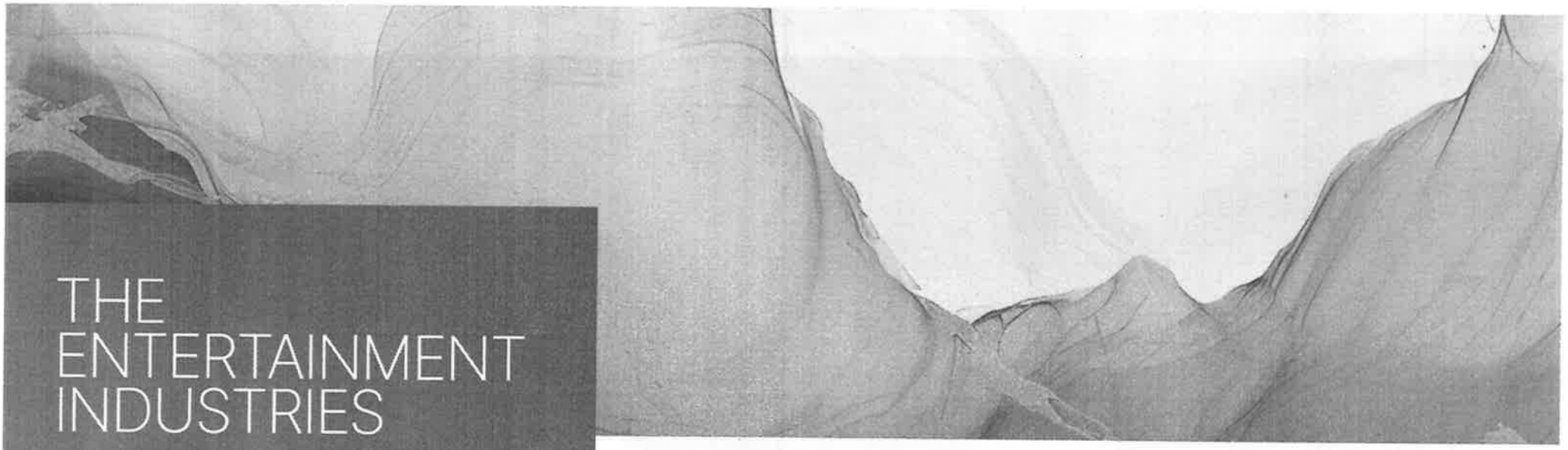


The vulnerability of self-employed and gig workers has historically been mitigated by the strong presence of organized labor in the entertainment industries. Compared to a 6% unionization rate across the entire U.S. economy, 8% of jobs in the arts, design, and entertainment sector fall under union representation. In certain industries, organized labor plays an outsized role.[22] Unionization rates in the Broadcasting industry were around 11% at last count, with the Motion Picture and Sound Recording Industries coming in even higher at 17%.

This partially accounts for the success that the entertainment industries have had when navigating the intersection of art and technology. Collective bargaining agreements specify the responsibilities and rights of both employers and employees regarding the adoption of new technology. The objective is to ensure that there is a balanced approach, where the interests of the workforce are weighed against the operational and strategic goals of the organization. Collective bargaining has also been instrumental in the development of mitigation strategies. These strategies are aimed at facilitating the introduction of new technology in the workplace and may include the implementation of employee training programs for new systems, clauses to address job displacement risks, and adjustments in workload. The goal of these strategies is to reduce job displacement and support a smoother transition for all parties involved in the face of technological changes.

[21] The evolving nature of the labor market for creative workers, particularly with the rise of non-traditional employment forms, poses significant challenges in accurately tracking job disruptions and losses. Traditional metrics, such as those highlighted in the monthly jobs report from the Bureau of Labor Statistics (BLS), are critical for understanding industry employment trends and the unemployment rate. However, the methodologies of these reports have limitations in the context of today's workforce dynamics. The monthly jobs report comprises two key surveys: the Current Employment Survey (CES) and the Current Population Survey (CPS). The CES, encompassing about 160,000 U.S. firms across approximately 400,000 worksites, offers substantial coverage but notably excludes self-employed individuals. On the other hand, while the CPS, which surveys around 60,000 households, does include self-employed persons, it lacks the detailed industrial and geographic insights provided by the CES.

[22] U.S. Bureau of Labor Statistics



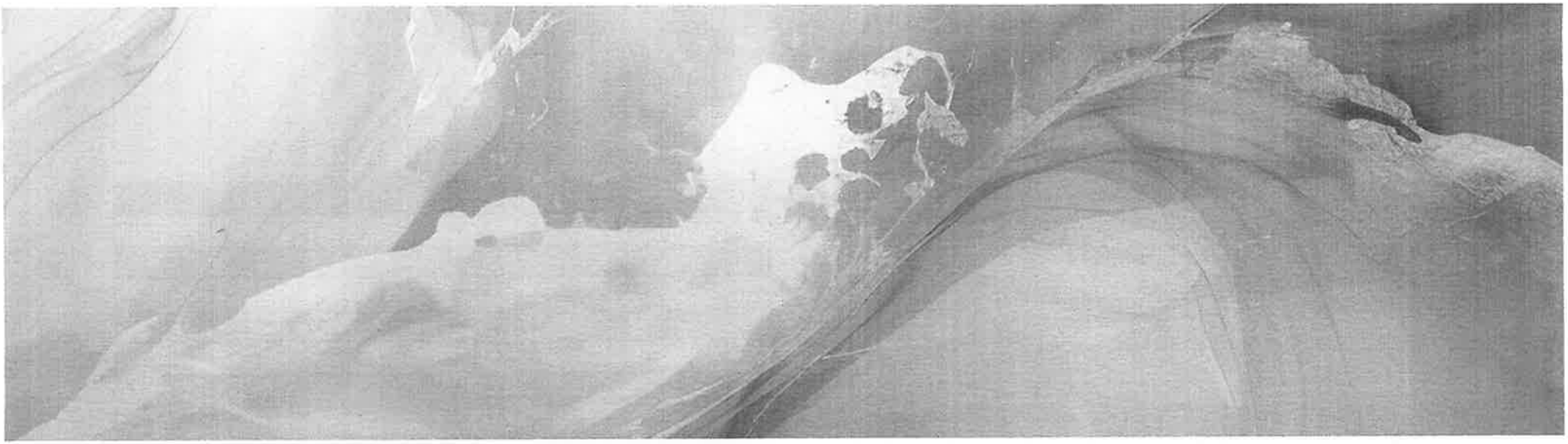
THE ENTERTAINMENT INDUSTRIES

Several articles, studies, and surveys in the past year have reflected the fears of marginalization and jobs losses among creative workers. What has been less clearly articulated are the perspectives of industry management and how they are thinking about the future of GenAI. In a survey of 300 business leaders across six entertainment industries, over 90% of respondents believed GenAI will play a larger role in the entertainment industries over the next three years, with 26% indicating it would play a significantly larger role. How this role ultimately manifests in these firms has yet to be seen. In the most positive light, GenAI may cut costs, boost output, and open up new forms of expression. It may also, however, automate a large share of workers — both the creative and non-creative minds needed to sustain the development and growth of these industries over the long term — out of their jobs.

Most firms are not waiting to see how this plays out. Among all firms surveyed, 72% can be considered "early adopters" of GenAI technology. Twenty-five percent (25%) of creative businesses reported already having a formal GenAI program in place — compared to 3.9% of businesses economy-wide[23] — and another 47% percent indicated they are in either the planning or early implementation stages of developing such a program (Figure 1). Such high adoption rates should not be surprising. More often than not, the adoption of new technology is tied to self-preservation, and early adopters reported they are investing in GenAI to stay competitive. Many studios are forming specialized departments focused on creating cutting-edge tools that integrate computer vision, machine learning, and foundational models. This integration, in turn, will impact areas once far removed from VFX, ranging from script development and storyboarding to editing and sound engineering (Figure 2).

[23] This aligns with the most recent Business Trends and Outlook Survey (BTOS) conducted by U.S. Census Bureau which found 26.1% of Motion Picture and Sound Recording Industry (NACIS 512) respondents indicated their business had used artificial intelligence in the production of goods and/or services in the previous two weeks (12/04/2023 to 12/17/2023).

[24] The term "stochastic parrot" refers to the fact that large language models may be able to generate coherent, convincing texts, but cannot discern the actual meaning of the text itself. They effectively "parrot" back information they are fed.



On the other end of the spectrum, 15% of survey respondents said their organizations had concerns about the use of GenAI and would not pursue related technologies until these concerns were addressed. By and large, these issues centered on not only what kind of content was being generated but how that content was being generated (Figure 3). Asked to name their top three concerns, employees cited issues related to the dangers of current GenAI systems being "stochastic parrots" (42% of the time);[24] a lack of transparency over GenAI decision-making processes and output (38%); and misinformation, content falsification, and deepfakes (36%).

Figure 1: GenAI's Expanding Footprint in the Entertainment Industries

Share of survey respondents who agreed with the following statements:

We already have one or more GenAI program(s) in place

We're at the early stages of implementing or planning to implement a GenAI program(s)

We're planning on implementing GenAI within the next 3 years, but haven't started anything yet

We're not planning to implement GenAI within the next 3 years

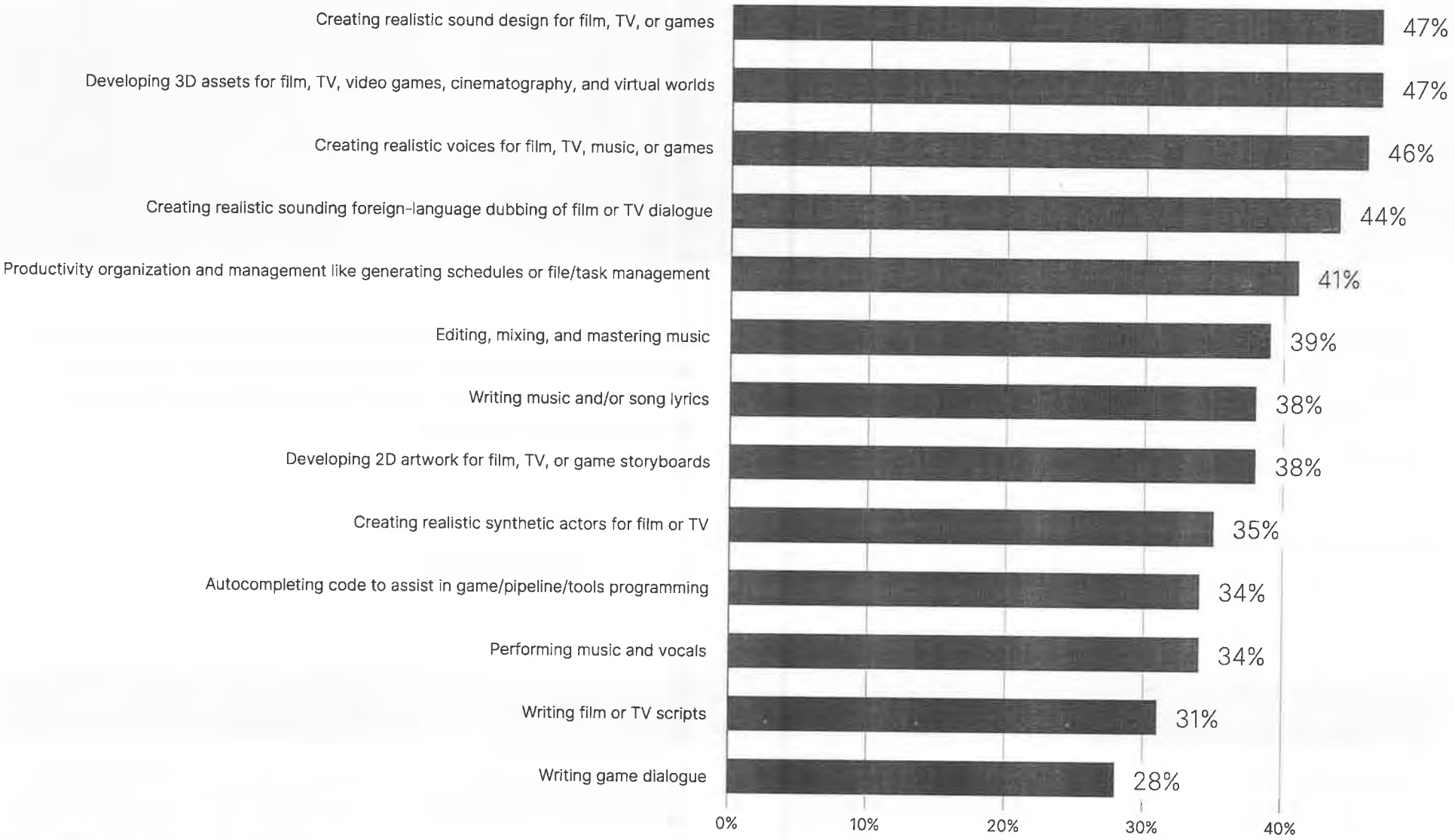
We have some concerns about current GenAI programs, external to our organization, and are waiting for those issues to be resolved

Note: Percentage values may total over 100% due to rounding.

Source: CVL Economics Survey (N=300)

Figure 2: Adoption of GenAI in the Entertainment Industries

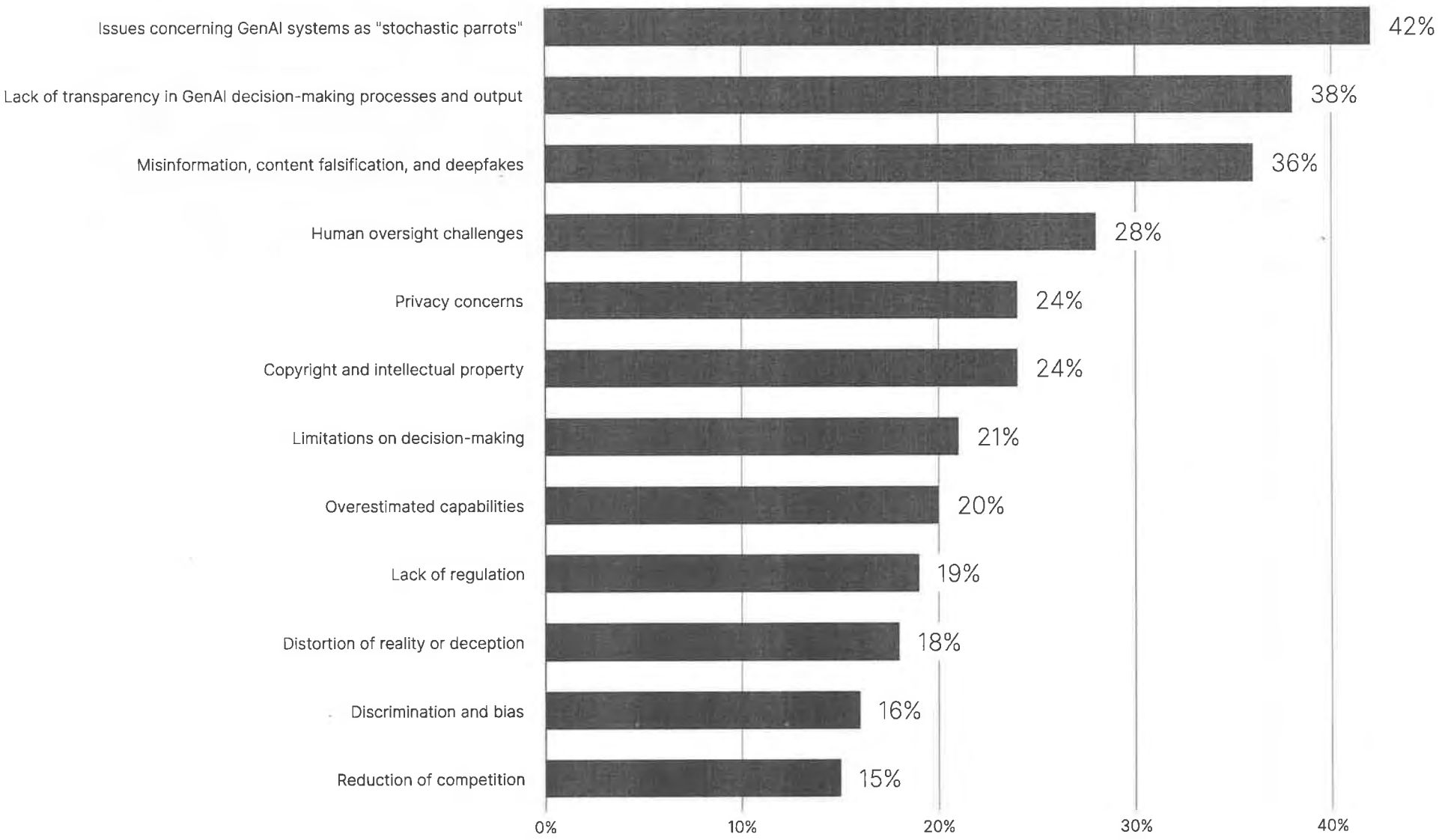
How creative firms expect to use GenAI over the next 3 years



Source: CVL Economics Survey (N=300). The responses that appear here were adapted from a survey conducted by YouGov and Variety Intelligence Platform (VIP+) in June 2023. To compare industry leader findings on creative tasks to attitudes of TV and Music workers in professions including Directors, Grips, Actors and Production, see VIP+ Variety Intelligence Plus Platform's "Entertainment Industry Has High Anxiety about Generative AI: Survey" (July 2023) and "Generative AI in Film & TV" (December 2023) authored by Audrey Schomer, VIP+ Media Analyst and Research Editor.

Figure 3: Ethical Concerns Raised by Entertainment Industry Employees

Share of times each issue ranked among the top three employee concerns in each firm



Source: CVL Economics Survey (n=170)

AI Integration and Job Demand

The extent to which creative jobs will be affected by GenAI adoption varies and is difficult to measure in isolation of broader macroeconomic trends, government policies, and changes in consumer preferences. That said, the entertainment industries have been adopting earlier forms of AI technology for years, and the pace of AI integration into creative job roles is increasing at a rapid clip; between 2020 and 2022, for example, the number of job postings that listed the ability to use artificial intelligence tools as a desired skill increased by 122%.[25]

[25] Lightcast.

Mapping these trends onto job demand across a range of creative occupations provides some insight into the role GenAI technology may play going forward (Figure 4). Software Engineers and Video Game Designers experienced high rates of AI integration into their workflows in recent years, while also enjoying high labor demand. These types of jobs would be expected to attract workers who can both develop and utilize GenAI technology, and increasing AI integration would only increase demand for their skill sets.

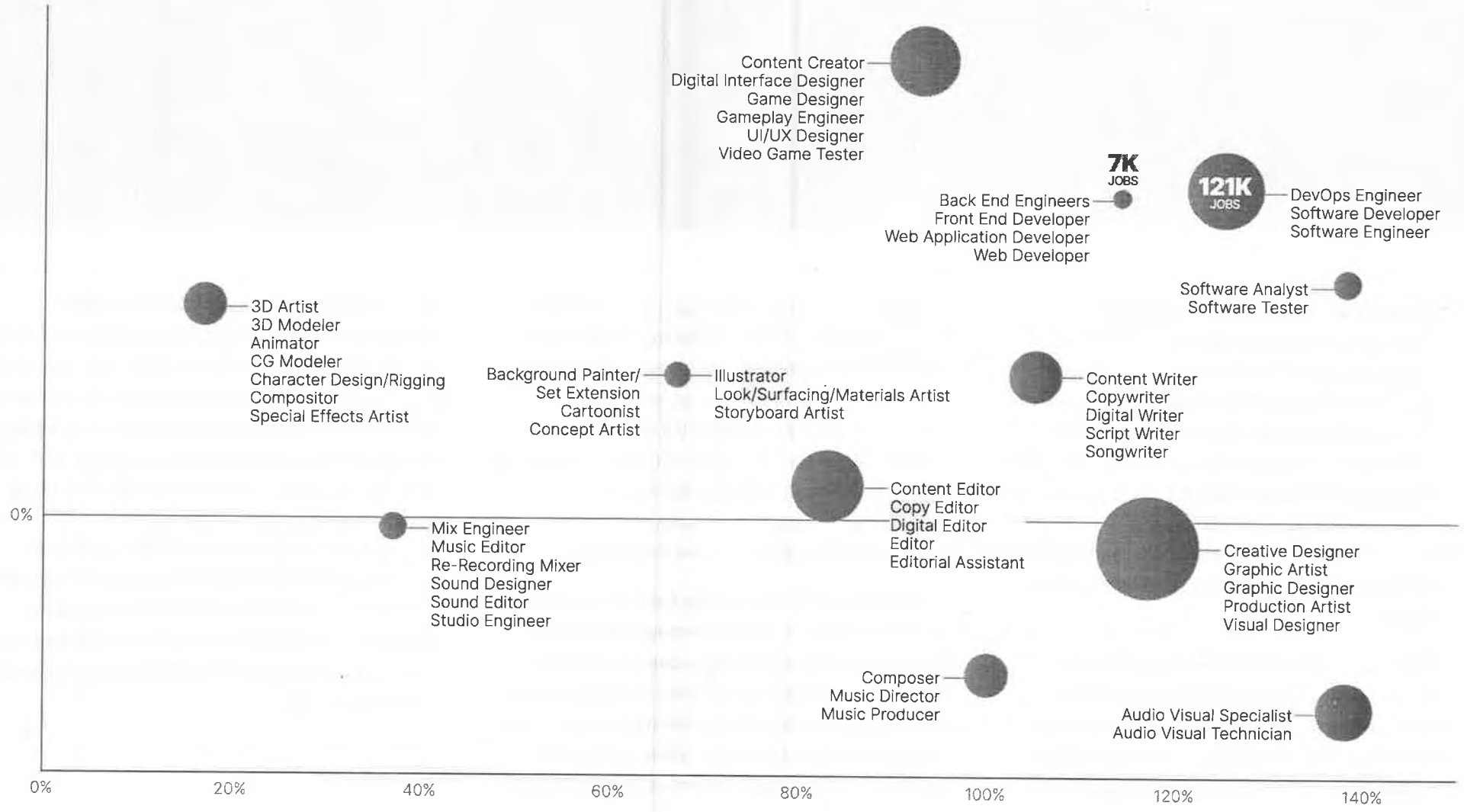
A high level of AI integration, however, does not necessarily imply high employment growth across the board, and in some cases it can even be associated with declining demand for certain creative roles. For instance, while AI integration increased 117% in graphic design roles, demand for actual Graphic Designers fell by 3%. While this decline may be correlated to other factors, rapid AI adoption in sectors that once outsourced graphic design services may minimize the need for human talent as AI generated content becomes an adequate substitute.[26] The same holds true across several occupations ranging from Production Artists to Audio/Visual Specialists to even Composers.

In other cases, the relationship between the two factors may mask emerging realities. By way of example, AI technologies have been less likely to be needed in recent years in both 3D Modeler and Sound Designer roles. These findings suggest that the former (where job growth increased by 25% between 2017 and 2022) would be more insulated from the disruptive effects of GenAI adoption compared to the latter (where job growth declined by 3%). Yet based on the survey results, both roles may be increasingly vulnerable over the next three years. Taking the long view, it is not even clear that job roles that are seemingly benefiting from AI integration now will also benefit later. The same people developing and utilizing GenAI technology next year may very well program themselves out of a job a few years down the road. The same may hold true for high-tech roles in other sectors. In this sense, what may be viewed as a "creative worker" issue may actually be a more insidious problem winding its way throughout the entire economy.

[28] U.S. Bureau of Labor Statistics Job Outlook: Graphic Designers. Available at: https://www.bls.gov/ooh/arts-and-design/graphic-designers.htm#tab-6.

Figure 4: AI Integration and Job Demand in Entertainment Industries

Mapping the vulnerability and augmentation of select jobs onto demand for AI skill sets prior to 2023
Circle size indicates relative number of jobs for each collection of job roles.



Note: Job Demand is measured by the 5-year (2017–2022) job growth for each occupation cluster. AI Integration is measured as the increase in job postings that list artificial intelligence as a desired skill between 2020 and 2022. Job role lists are illustrative and not meant to be exhaustive.

Source: CVL Economics; Lightcast

The use of GenAI, both in form and frequency, can vary drastically from role to role. Some workers may be just becoming acquainted with technologies like ChatGPT and use them for a small share of their day-to-day tasks, whereas programs like DALL-E may become the norm for others who need photorealistic imagery to perform their job. It is this second case that many find most concerning, where GenAI may play a large enough role to "displace" an existing job by either consolidating specific roles, replacing existing job roles with new ones, or even eliminating certain jobs entirely. The impact will not be inconsequential. Based on survey respondents' GenAI implementation plans, it is estimated nearly 203,800 payroll jobs will be affected by GenAI across the entertainment industries nationwide by 2026.

States with a high concentration of jobs in the entertainment industries, such as California, New York, Georgia, and Washington, will be most affected by GenAI-related job disruption (Figure 5). California — the global hub for entertainment — has the highest concentration of creative industry employment, accounting for 28.1% of U.S. creative industry jobs. California will see about 62,000 creative industry jobs affected by 2026. New York, which also has a large entertainment industry presence, accounts for 14% of the total U.S. creative industry workforce; by 2026, a sufficient number of tasks will have been impacted to cause the consolidation, replacement, or elimination of 26,000 jobs. Georgia and Washington — states with growing media and gaming hubs — each account for almost 4% of total U.S. creative industry jobs and will see 7,800 and 7,000 creative industry jobs disrupted by GenAI, respectively.

203,800

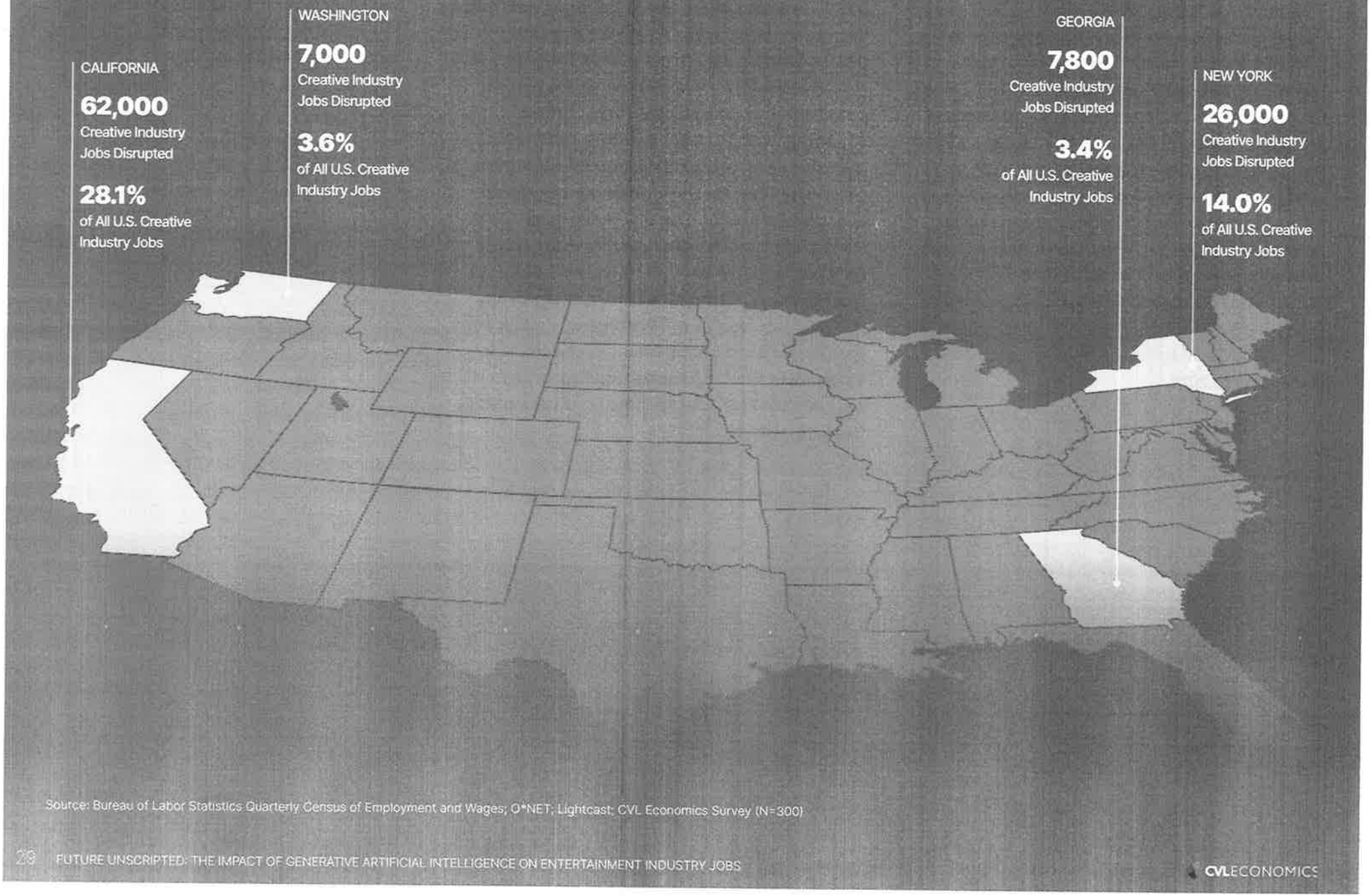
U.S. Entertainment Jobs Disrupted by 2026

16.1%

Share of U.S. Entertainment Jobs Disrupted by 2026

Figure 5: Job Disruption in the Entertainment Industries

Impact on jobs in U.S. states with largest creative industry employment by 2026



Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; O*NET; Lightcast; CVL Economics Survey (N=300)

A key question to ask, then, is which jobs (or specific occupations) are most vulnerable to displacement? The answer lies in examining a given occupation's specific tasks and responsibilities and assessing which ones, to some degree, can be assigned to GenAI technologies. If GenAI will be completing tasks such as 3D modeling, voice generation, storyboarding, and writing at an increasing scale, then it would be reasonable to expect that jobs built around these kinds of tasks will be vulnerable to displacement by GenAI. Although the business leaders surveyed conceded there would inevitably be some job losses, 94% saw the introduction of GenAI leading to new job roles or titles within their organizations.

This yields a follow-up question: will the number of jobs displaced be offset by the number of jobs created? This is difficult to answer at this stage. About half of the early adopters surveyed reported that the adoption of a GenAI program introduced new tasks and responsibilities, some of which required some upskilling or retraining among existing employees. Whether these new tasks and responsibilities translate to expanded job roles, lead to worker turnover, or cause a contraction of the workforce will take time to sort out. This is especially true for the entertainment industries, where many jobs have been largely immune to automation. Now, with GenAI programs growing more versatile and accessible, the ability to generate novel and complex outputs is testing the limits of that immunity.

SHARE OF EARLY ADOPTERS WHO SAID GENAI HAS:

59%

Increased efficiency in routine tasks

51%

Introduced new tasks and responsibilities

49%

Required employee upskilling or retraining

43%

Reduced time spent on repetitive tasks

Source: CVL Economics Survey (n=214)

Desired Skills in the Entertainment Industries

As the use of GenAI technology becomes more pervasive, the value of certain job skills is expected to change.

Demand for machine learning skills is expected to grow as businesses expand use of GenAI in their operations. Creativity and domain knowledge, which is derived from experience rather than data sets, are especially high-valued. In fact, more survey respondents (45%) viewed creativity capabilities as more desirable than machine learning skill sets (42%), with domain knowledge (38%) ranking closely behind. As job requirements and skill demands evolve, businesses must adopt more strategic talent management approaches. Over 85% of survey respondents expected their employees would either need some new skills or a completely new set of skills in the next three years to work with GenAI.

Ensuring that uniquely human capabilities like creativity and domain knowledge are also prioritized will need to be factored into the size and composition of a firm's creative workforce. To some degree, such a sentiment resonates at the management level. An overwhelming majority (91%) of industry leaders surveyed for this study believe consumers can discern between products created by humans and those generated by AI. Indeed, the question of "authenticity" can affect perceived value. Eighty-four (84%) percent of respondents said it was important to emphasize and promote the "human-made" aspects of artistic products rather than the "AI-generated" components. While consumers may feel confident today about their ability to make such a distinction, however, the increasing sophistication of GenAI is likely to blur the lines sooner than most realize.

SHARE OF SURVEY RESPONDENTS WHO SAID THE INCREASING PREVALENCE OF GENAI MAKES THE FOLLOWING SKILLS AND/OR CAPABILITIES MOST VALUABLE:

45%

Creativity

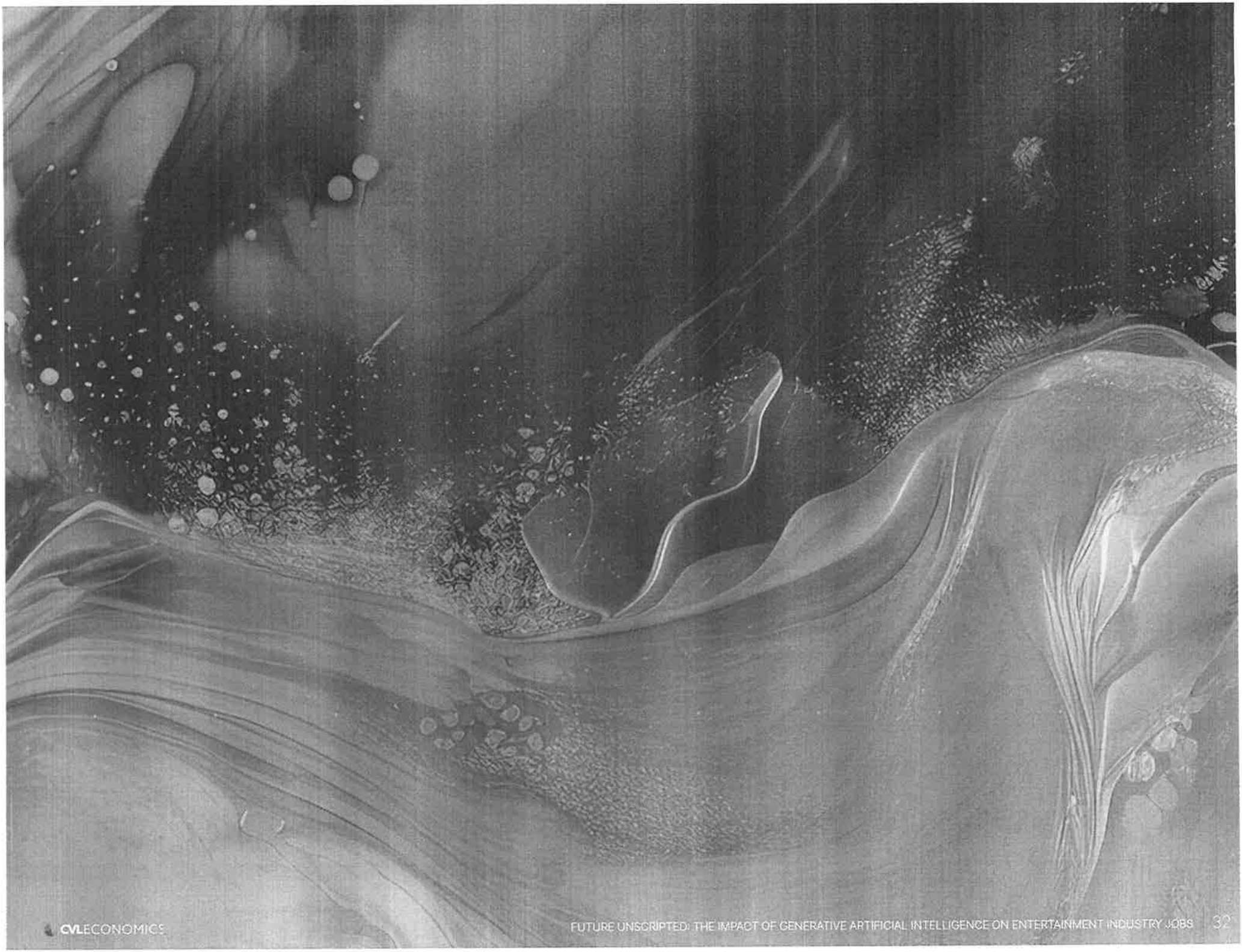
42%

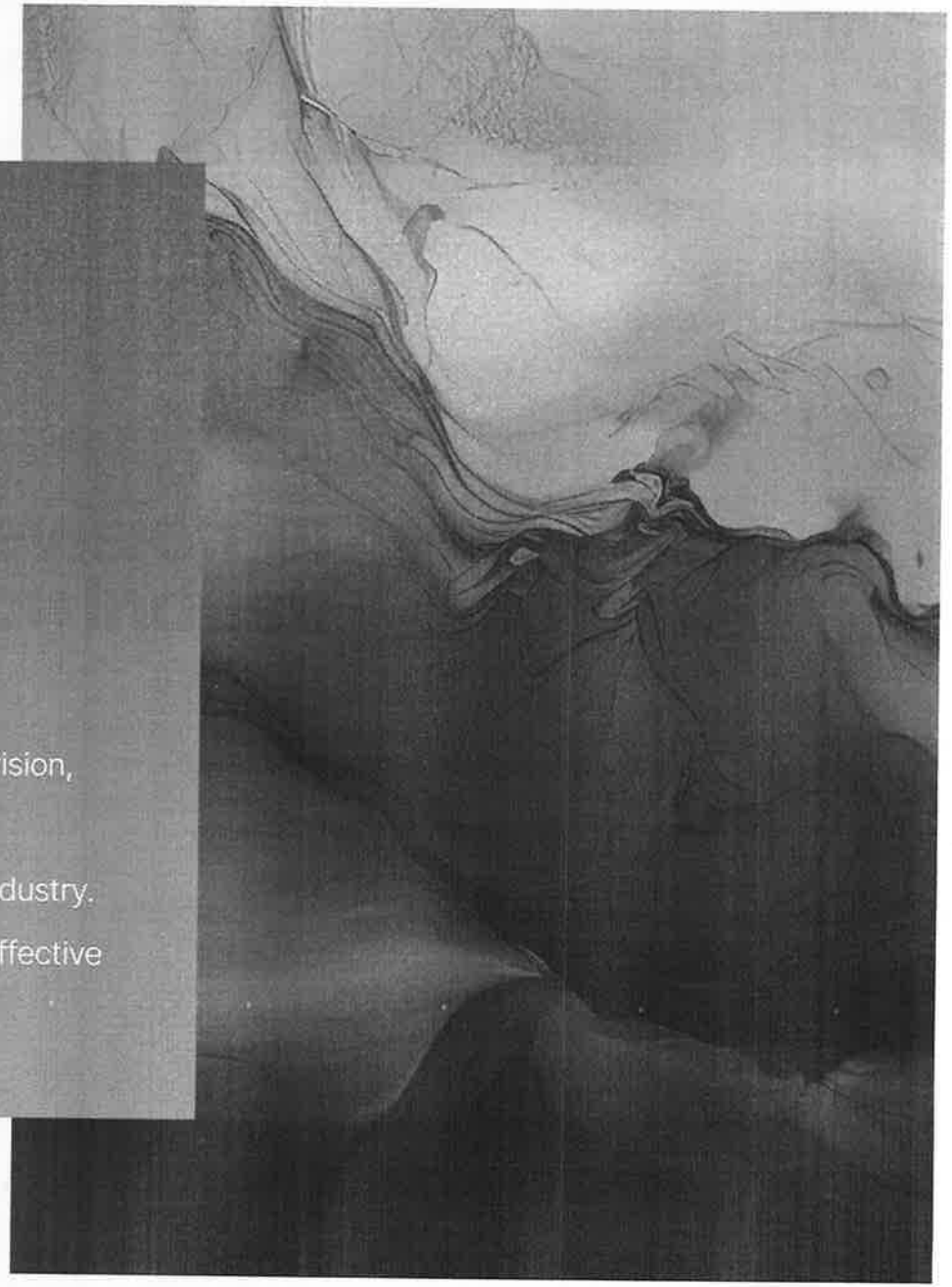
Machine Learning

38%

Domain Knowledge

Source: CVL Economics Survey (N=300)





Film, Television, and Animation Industry[27]

From scriptwriting to acting, many tasks and roles across the Film, Television, and Animation industry have the potential to be completed by GenAI technology, and early adopters account for almost 70% of firms in the industry. Almost half (47%) of all survey respondents expect GenAI will be most effective in developing 3D assets for film, television, gaming, and virtual worlds.

Visual effects (VFX) studios, for instance, are increasingly becoming more involved from the project's inception, which allows them to employ new technologies, enhance creativity, and mitigate risks earlier in the production cycle. With GenAI technology at hand, the industry is being pushed to reexamine and revamp core processes, workflows, talent needs, and digital asset management.

This growing capability and expanding footprint raise the stakes for the industry's workforce. The recent Disney+ release of Marvel's *Secret Invasion*, for example, featured an opening sequence that was heavily generated by artificial intelligence. The public backlash against what was believed to be a work that featured no human input prompted Method Studios, a VFX studio/vendor who used GenAI to help create the opening credits, to issue a statement that the process in fact included contributions by Art Directors, Animators, and Artists.[28] Still, as one observer notes, "What isn't good is when artists get completely removed from the creative process entirely, and the opening of *Secret Invasion* feels very much like it's heralding that potential future."[29]

In the United States, the Film, Television, and Animation industry job count totals 555,000 across 39,500 establishments.[30] Nearly 120,000 payroll jobs are likely to be disrupted by GenAI by 2026, which accounts for over 21% of all Film, Television, and Animation jobs. States that have a high concentration of industry activity will be most impacted by GenAI (Figure 6). California, which has the highest concentration of industry jobs (a location quotient of 2.81) will see about 39,500 jobs displaced by 2026, accounting for 33.3% of all industry jobs that will be either consolidated, replaced, or eliminated. New York will see about 15,100 (or 12.8%) industry jobs affected. Georgia, which has an exponentially growing industry, will see about 6,100 industry jobs displaced by GenAI by 2026.

39,500

Total Establishments (2022)

555,000

Industry Employment (2023)

68.7%

Share of GenAI Early Adopters (2023)

118,500

Industry Jobs Disrupted by GenAI (by 2026)

21.4%

Share of Industry Jobs Disrupted by GenAI (by 2026)

Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; Lightcast; CVL Economics Survey (n=150)

[27] The "Film, Television, and Animation" industry analysis in this section includes responses from "Radio and Broadcasting" industry survey participants.

[28] Carolyn Giardina, "'Secret Invasion' Opening Using AI Cost 'No Artists' Jobs,' Says Studio That Made It (Exclusive)", Hollywood Reporter, June 21, 2023 https://www.hollywoodreporter.com/tv/tv-news/secret-invasion-ai-opening-1235521299/.

[29] Charles Pulliam-Moore, "Unfortunately, Secret Invasion's AI credits are exactly what we should expect from Marvel," The Verge, June 27, 2023, https://www.theverge.com/2023/6/27/23770133/secret-invasion-ai-credits-marvel.

[30] An "establishment" is a physical location of a business, which differs from a "firm." A firm is a single entity that may have one or more establishments, each with its own distinct address.

Figure 6: Job Disruption in the Film, Television, and Animation Industry

Impact on jobs in U.S. states with largest Film, Television, and Animation employment concentration by 2026

Note: Location Quotient measures a region's industry employment concentration relative to the United States as a whole. A Location Quotient greater than 1 indicates industry employment accounts for a larger share of the regional economy than it does nationwide.

Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; O*NET; Lightcast; CVL Economics Survey (n=150)

When thinking about the types of Film, Television, and Animation tasks and responsibilities — and by extension, jobs — that face higher exposure to GenAI integration, the production cycle can provide a useful lens. Eighty percent (80%) of early adopters of GenAI in the industry are currently using or are planning to use GenAI technology in post-production processes (Figure 7), which focuses on editing and adding visual effects to finalize content. The GenAI program TrueSync, for example, can manipulate the movement of actor's lips to accommodate dubbing in different languages.[31] Not only was the use of this type of technology a sticking point during the negotiations between SAG-AFTRA and AMPTP, but its proliferation is also likely to suppress demand for multilingual voice actors in emerging fields like entertainment localization.[32]

Similar displacement will also occur in other stages, with about 70% of early adopters engaged in the production phase and another 60% engaged in pre-preproduction. In the movie *Here*, starring Tom Hanks and Robin Wright (to be released in 2024), software developed by Metaphysic was used to "de-age" the actors, whereas, previously, hair and makeup artists or younger actors may have been employed to approximate the same ends.[33] Similarly, GenAI is now often used in pre-production to help create images that can speed up pre-visualization, character design, and storyboarding processes, minimizing the need for the holistic skill sets offered by concept artists, illustrators, and animators.[34]

Among early adopters in Film, Television, and Animation, roughly 44% are implementing GenAI technology to assist in generating 3D models and 39% in generating character and environment design tasks. Thirty-seven percent (37%) are using the technology to assist in voice generation and cloning and compositing tasks. Overall, jobs associated with these types of tasks will be most affected by GenAI, such as 3D Modelers, Sound Editors, and Concept Artists (Table 3).

Roughly one in three business leaders across Film, Television and Animation predict job displacement over the next three years for Sound Editors and 3D Modelers. Job titles including Sound Design, Compositors, and Graphic Designer were flagged as vulnerable to displacement by roughly one in four respondents. One in three saw Re-Recording Mixers, Broadcast Technicians, Audio and Video Technicians as vulnerable. Fifteen percent (15%) of respondents predicted jobs for Storyboard Artists, Illustrators, Look/Surface/Materials Artists, and Animators were at risk for consolidation, replacement, or elimination by 2026.

TOP GENAI PROGRAMS USED IN THE FILM, TELEVISION, AND ANIMATION INDUSTRY:

Azure AI

ChatGPT (OpenAI)

Imagen (Google)

StarryAI

Deep Dream

Source: CVL Economics Survey (n=150)

[31] Cate Lawrence, "Generative AI is bringing the biggest disruption to filmmaking in 100 years," Tech.eu, January 23, 2023, https://tech.eu/2023/01/23/flawless-brings/.

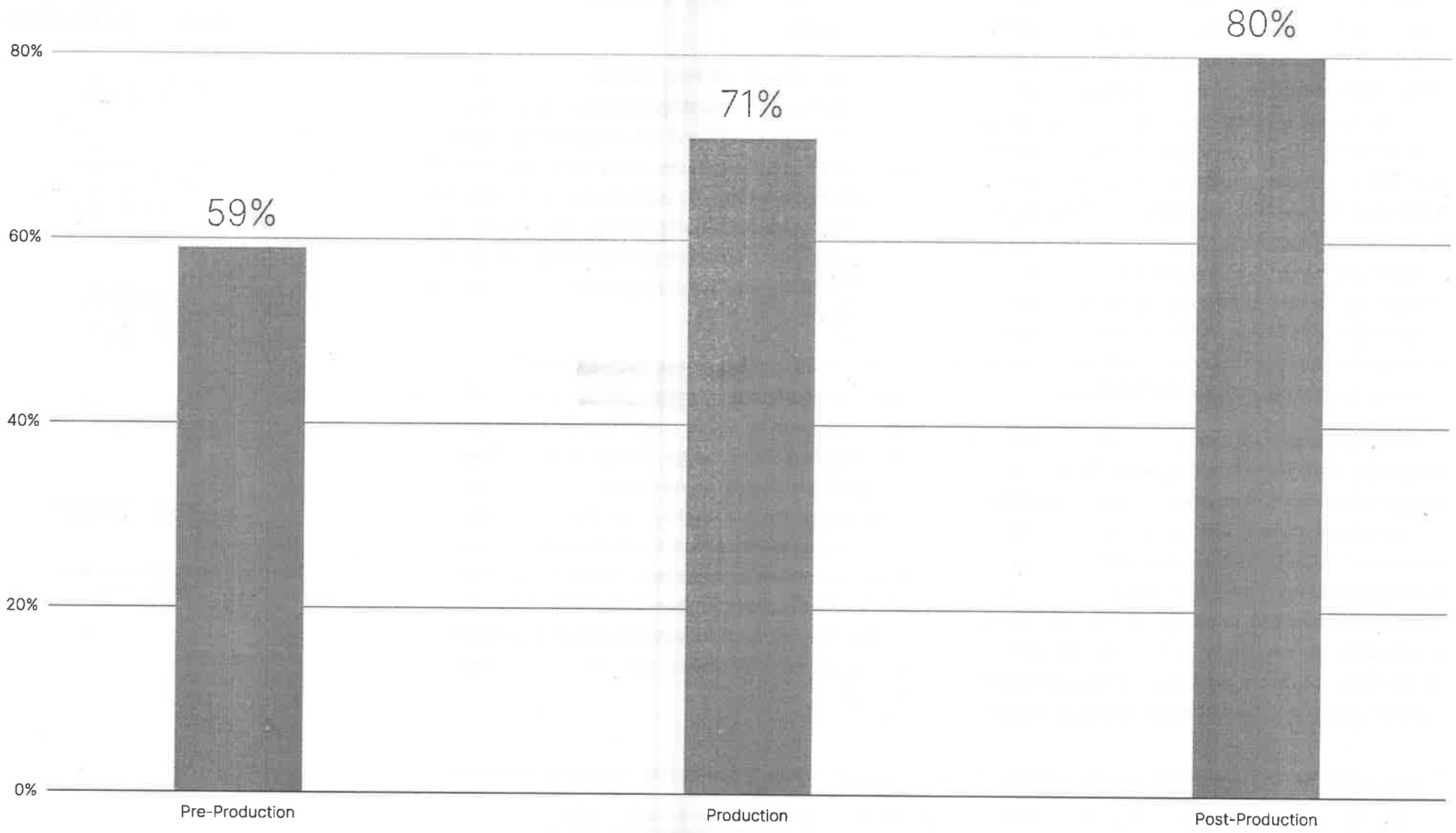
[32] Andreas Wiseman, "The Future Of Film Dubbing? 'Fall' AI Firm Flawless Partners With XYZ & Tea Shop To Acquire & "Visually Translate" Foreign Language Movies — Cannes Market," Deadline, May 19, 2023, https://deadline.com/2023/05/ai-fall-dubbing-flawless-xyz-tea-shop-buy-movies-cannes-1235373298/.

[33] Diana Lodderhose, "Technologies Like AI & Unreal Engine Are Having A Big Impact On The Entertainment Business, But Where Will It Go From Here?," Deadline, May 21, 2023, https://deadline.com/2023/05/ai-unreal-engine-technology-disruptors-1235364383/.

[34] Nate Bek, "This generative AI startup wants to help content creators in the storyboarding process," GeekWire, April 13, 2023, https://www.geekwire.com/2023/this-generative-ai-startup-wants-to-help-content-creators-in-the-storyboarding-process/

Figure 7: GenAI Use in Film, Television, and Animation Industry

Share of Film, Television, and Animation industry firms using GenAI in each phase of the production cycle



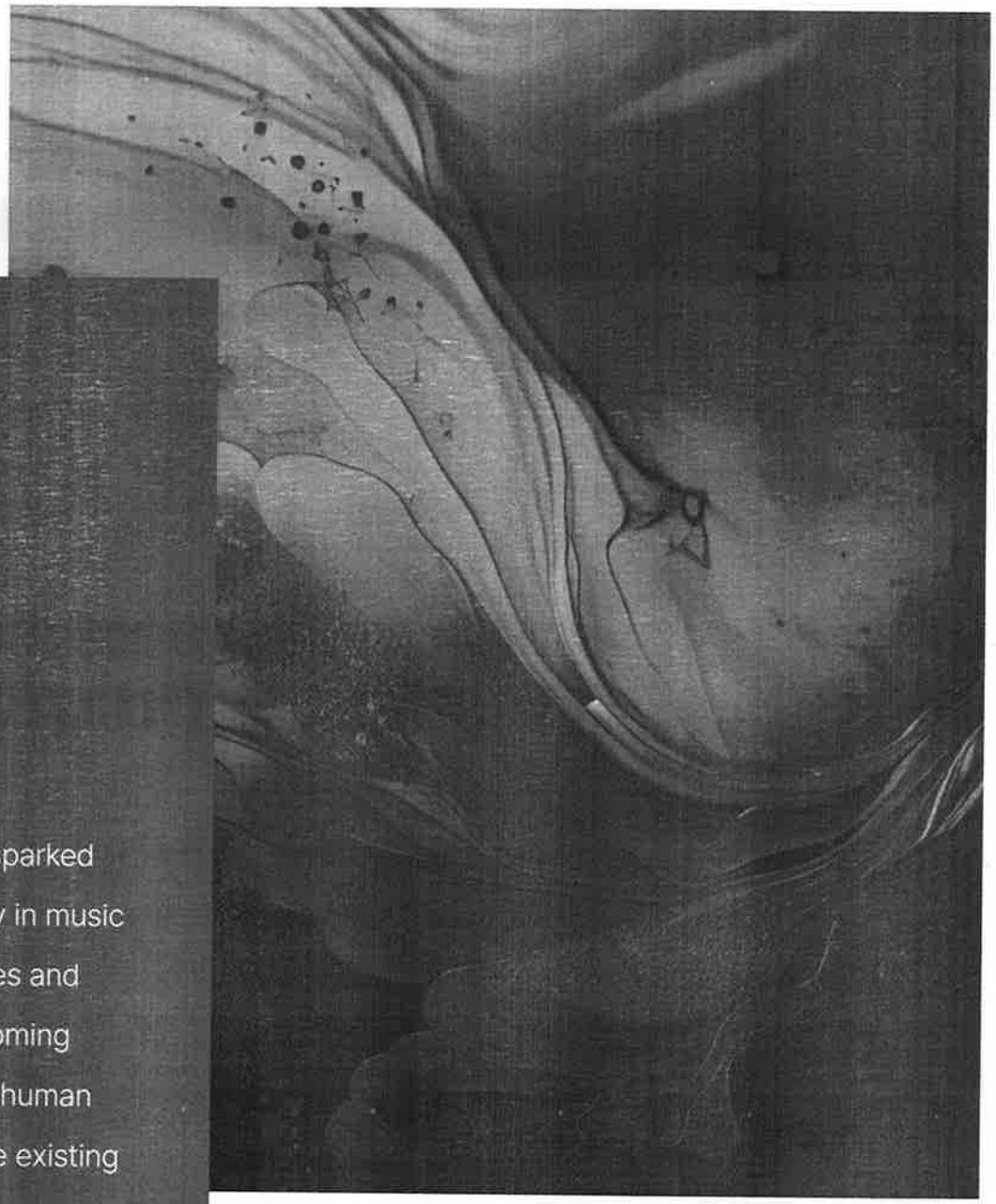
Source: CVL Economics Survey (n=150)

Table 3: GenAI Impact on Film, Television, and Animation Industry Tasks

Share of survey respondents who reported GenAI would impact the following tasks:

TASK		SAMPLE JOBS
3D Modeling	44%	3D Modeler, CG Modeler, Design Engineer, Product Design Manager, Video Designer, Motion Graphic Artist
Character and Environment Design	39%	Illustrator, Concept Artist, Environment Artist, Character Artist, Cartoonist
Voice Generation and Cloning	37%	Sound Designer, Sound Editor, Mix Engineer, Music Editor
Compositing	37%	Compositor, Nuke Compositor, Motion Designer, FX Technical Director
Sound Design	34%	Sound Editor, Sound Designer, Re-recording Mixer
Tools Programming	29%	Digital Interface Designer, Broadcast Technician, Software Engineer, Technical Project Manager, Technical Artist
Script Writing	29%	Script Writer, Associate Producer, Production Assistant
Animation and Rigging	27%	Special Effects Artist, Animator, Graphic Designer, Technical Animator, Rigging Manager, Entertainment Technician
Concept Art/Visual Development	26%	Storyboard Artist, Concept Artist, Creative Director, Graphic Designer
Light/Texture Generation	25%	Texture Artist, Look/Surfacing/Materials Artist, Background Painter, Environment Artist, Modeler, Lighting Technician

Source: 2023 CVL Economics Survey (n=150); Lightcast



Music and Sound Recording Industry

The integration of GenAI in Music and Sound Recording has sparked ethical concerns around the loss of authenticity and creativity in music and sound production. With the capability to recreate melodies and replicate musicians' voices convincingly and quickly, it is becoming easier than ever to generate a music track without any direct human involvement.[35] This also means it has become easier to violate existing copyright laws and generate deepfakes by using artists' voices or work without their permission.

For instance, in April 2023, hip hop fans embraced *Heart on My Sleeve*, a track attributed to Drake featuring the Weeknd. Millions of streams hit before it was confirmed that the whole song was generated by GenAI. Fears of copyright infringement led to the song being removed from most streaming services, but the precedent had been set. Even Spotify, which was among the platforms that pulled *Heart on My Sleeve*, has refused to commit to a ban on all AI-generated content.[36]

There are 5,000 establishments and 21,300 employees in Music and Sound Recording nationwide. About half (53%) of industry firms are early adopters of GenAI programs. Compared to other entertainment industries like Gaming and Film, Television, and Animation, firms in Music and Sound Recording have been slower to adopt GenAI programs. About 37% of business leaders surveyed are planning to implement GenAI within the next three years but haven't yet begun the program development process.

Nearly 1,800 payroll jobs will be affected in this industry across the U.S. by 2026. At about 450 jobs, California will feel the greatest job disruption over the same time horizon (Table 8), but Tennessee, which has the largest industry employment concentration relative to its own economy, will feel the impact more. It is only appropriate then that Tennessee is the first state in the nation to pursue legislation protecting musicians from the abuse of GenAI technologies.[37]

5,000

Total Establishments (2022)

21,300

Industry Employment (2023)

53.3%

Share of GenAI Early Adopters (2023)

1,800

Industry Jobs Disrupted by GenAI (by 2026)

8.4%

Share of Industry Jobs Disrupted by GenAI (by 2026)

Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; Lightcast; CVL Economics Survey (n=60)

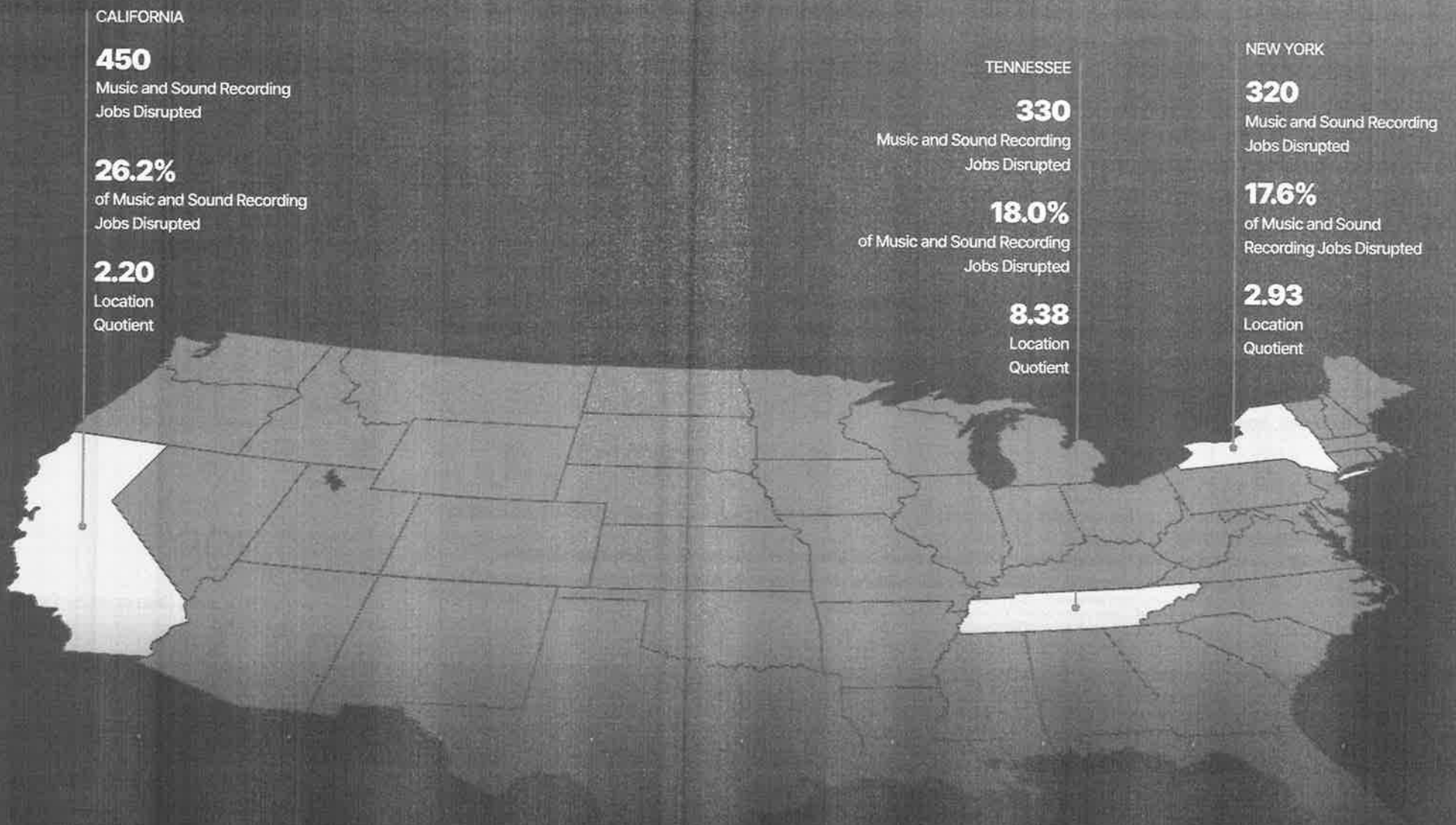
[35] Emilia David, "TikTok can generate AI songs, but it probably shouldn't," The Verge, January 19, 2024, https://www.theverge.com/2024/1/18/24043432/tiktok-generative-ai-music-viral-bloom.

[36] Zoe Kleinman, "Spotify will not ban AI-made music, says boss," BBC, September 25, 2023, https://www.bbc.com/news/technology-66882414.

[37] Audrey Gibbs and Vivian Jones, "Gov. Bill Lee proposes 'ELVIS Act' to protect musicians, songwriters from misused AI," The Tennessean, January 10, 2024, https://www.tennessean.com/story/entertainment/music/2024/01/10/ai-music-gov-bill-lee-bill-protect-artists-artificial-intelligence/72163690007/

Figure 8: Job Disruption in the Music and Sound Recording Industry

Impact on jobs in U.S. states with largest Music and Sound Recording employment concentration by 2026



Note: Location Quotient measures a region's industry employment concentration relative to the United States as a whole. A Location Quotient greater than 1 indicates industry employment accounts for a larger share of the regional economy than it does nationwide.

Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; O*NET; Lightcast; CVL Economics Survey (n=60)

Approximately 63% of Music and Sound Recording early adopters use GenAI technology for pre-production processes (Figure 9). GenAI is used to help generate lyrics and melodies, realistic voices, and instrumental arrangements. Programs like AIVA, which has been available since 2016, generate songs by analyzing patterns among an extensive database of compositions.[38] More recent offerings, like the Stanford Institute for Human-Centered Artificial Intelligence's Anticipatory Music Transformer, allow users to input their own song components into a program to generate accompaniments and variations.[39] Viewed in a favorable light, such GenAI programs can be tools that augment creativity. At the same time, the democratization of composition makes it easier for non-musicians to develop works that can be featured in commercials, video games, and other applications where songwriters or composers would otherwise be commissioned.

Just over half of early adopters (54%) reported using GenAI technology in production processes, and only one third said they were deployed during post-production. One of the more famous examples in the past year involved the November 2023 release of *Now and Then*, dubbed "the last Beatles song." Wingnut Films' machine-learning AI technology MAL (the same audio technology used in Peter Jackson's 2021 Beatles documentary series) was used to isolate and enhance John Lennon's voice from a forty-year-old cassette recording.[40] In this case, MAL allowed engineers to complete a task that would not have been possible otherwise. By the same token, though, it is not difficult to foresee how similar technologies can invert the sound engineer's role from a principal to supporting one.

Most early adopters in Music and Sound Recording deploy GenAI technology to assist with voice generation and cloning (57%) and music generation and recording (52%). About half use GenAI programs for lyrics generation and about 45% and 40% of respondents use GenAI for mastering and mixing, respectively. Jobs associated with these tasks will be most affected by GenAI, such as Sound Designers, Sound Engineers, Music Editors, Lyricists, and Composers (Table 4). Business leaders in Music and Sound Recording foresee Sound Designers being the job most likely to be consolidated, replaced, or eliminated, with 55% foreseeing GenAI-related displacement in that occupation over the next three years. A little over 40% of business leaders see Music Editors, Audio Technicians, and Sound Engineers being vulnerable. One in three also foresee potential displacement for Songwriters, Composers, and Studio Engineers by 2026.

TOP GENAI PROGRAMS USED IN THE MUSIC AND SOUND RECORDING INDUSTRY:

Azure AI

Deep Dream

ChatGPT (OpenAI)

Stable Diffusion

Photosonic

Source: CVL Economics Survey (n=60)

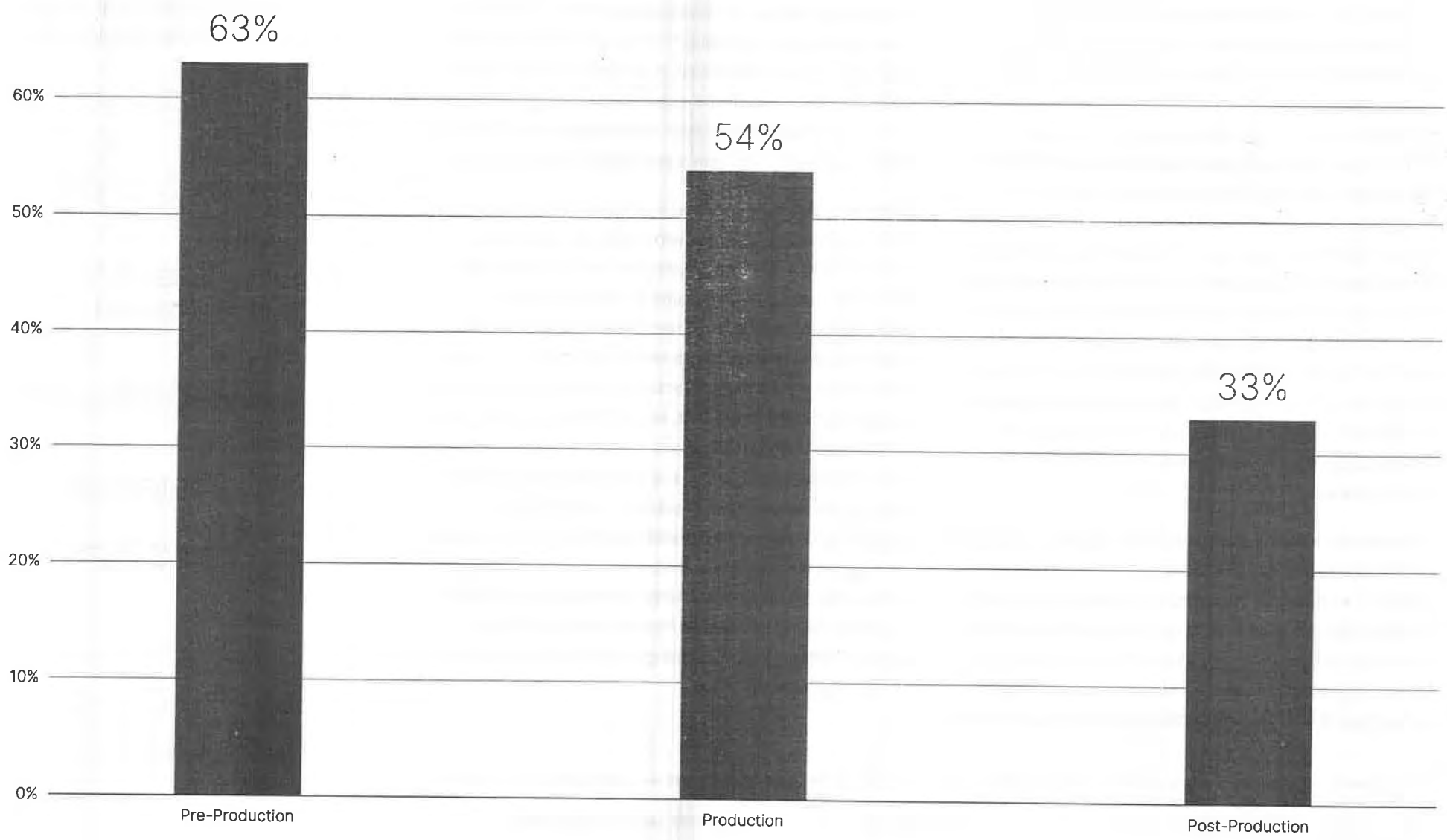
[38] David Henkin, "Orchestrating the Future — AI in the Music Industry," Forbes, December 5, 2023, https://www.forbes.com/sites/davidhenkin/2023/12/05/orchestrating-the-future-ai-in-the-music-industry/?sh=34f116dd4f64.

[39] See John Thickstun, David Hall, Chris Donahue, Percy Liang, "Anticipatory Music Transformer," arXiv, June 14, 2023, https://doi.org/10.48550/arXiv.2306.08620.

[40] Joe Coscarelli, "The Beatles' 'Now and Then,' Billed as 'Last Song,' Due Nov. 2." The New York Times, October 26, 2023, https://www.nytimes.com/2023/10/26/arts/music/beatles-final-song-now-and-then.html

Figure 9: GenAI Use in Music and Sound Recording Industry

Share of Music and Sound Recording industry firms using GenAI in each phase of the production cycle



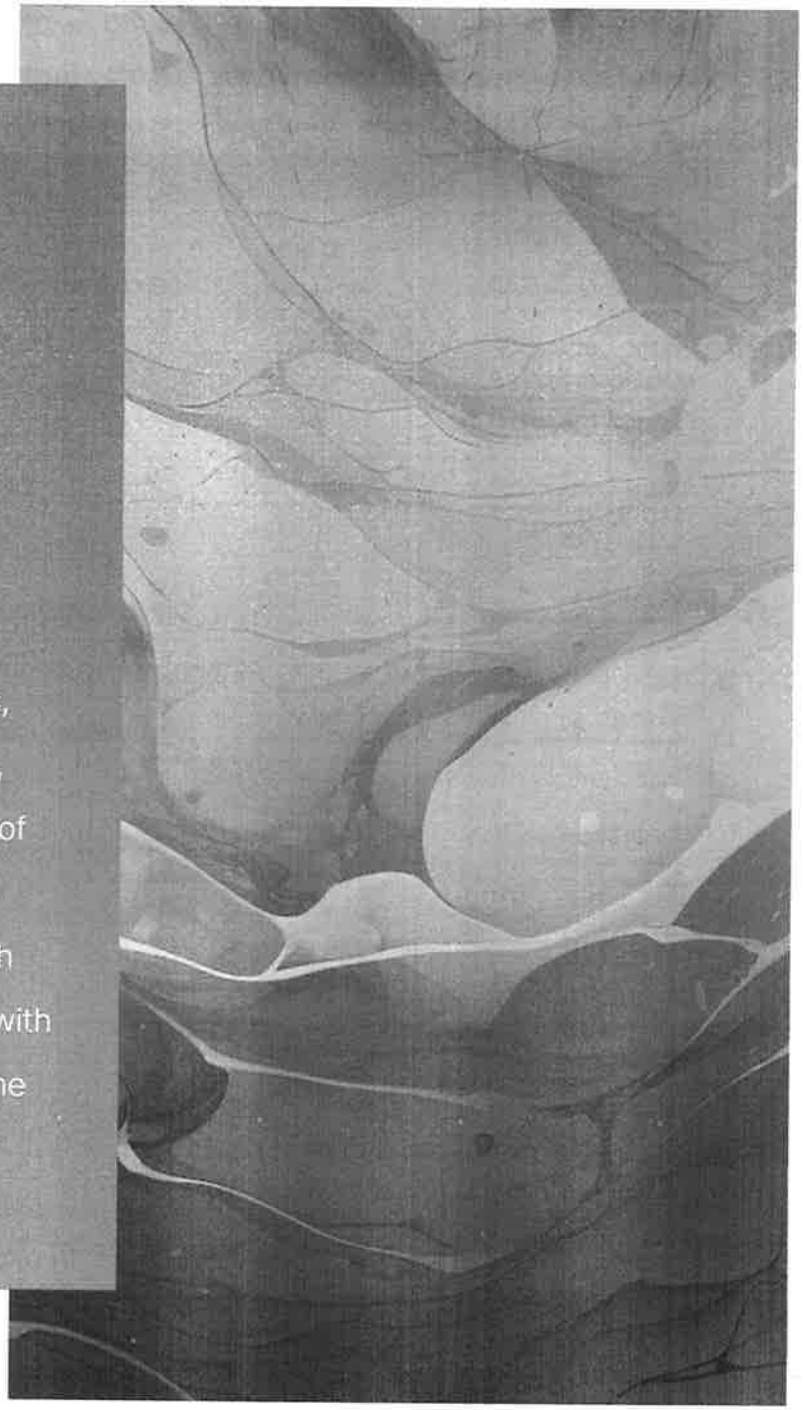
Source: CVL Economics Survey (n=60)

Table 4: GenAI Impact on Music and Sound Recording Industry Tasks

Share of survey respondents who reported GenAI would impact the following tasks:

TASK		SAMPLE JOBS
Voice Generation and Cloning	57%	Sound Designer, Composer, Sound Engineer
Music Generation and Recording	52%	Sound Engineer, Studio Engineer, Music Editor, Audio Technician
Lyrics Composition	50%	Lyricist, Songwriter
Mastering	45%	Sound Editor, Music Producer
Mixing	40%	Mix Engineer, Composer
Tools Programming	27%	Software Engineer, Software Developer

Source: 2023 CVL Economics Survey (n=60); Lightcast



Gaming Industry[41]

The Gaming industry relies heavily, more so than the other entertainment industries, on GenAI to carry out tasks like generating storyboards, character designs, renders, and animations. In fact, by some estimates GenAI may contribute to more than half of the game development process in the next five to ten years.[42] Even today there are cases where GenAI has been the dominant driver in bringing a game to market, such as Scriptic's Dark Mode, an "interactive horror anthology" developed in partnership with OpenAI and using DALL-E 2. As Scriptic's founder Nihal Tharoor noted, the goal of the project was to use "generative AI as a total solution for media production."[43]

In another sign of game development moving away from dedicated creative talent, gaming startup Auxuman partnered with LG and Oorbit to give consumers the ability to generate full-featured online multiplayer games from the comfort of their own homes. In response to specific prompts to select the type of game, locations, and character styles, a GenAI app generates a "metaverse" for them.[44] In the words of Auxuman's Chief Executive Officer Negar Shaghagi, "Most of what we do is research and development on how we can use AI to simplify game creation."

Auxuman's initial foray into GenAI involved ways of giving non-playable characters (NPCs) in video games a seemingly greater degree of agency. Whereas NPCs in conventional games are categorized as being one-dimensional and with a limited number of pre-determined responses to player inputs, GenAI has opened up new possibilities. Ghostwriter, a text-based GenAI program, is being deployed to increase the ways that NPCs can respond with realistic dialogue based on the player's input — even enabling the characters' mood and tone of speech to change.[45] Although this expands opportunities from the player's perspective, opportunities for creative content developers and writers may decrease as a result.

Gaming is among the fastest growing U.S. industries overall and home to 24,500 establishments and 390,500 employees. Among the entertainment industries, Gaming had the highest share of firms that were early adopters of GenAI. Nearly 90% of firms have implemented or are in the process of implementing GenAI programs. These technologies will create new opportunities for job creation in Gaming but will also lead to job consolidation, replacement, and elimination for certain roles. Over 52,400 payroll jobs are expected to be affected by GenAI in the United States by 2026. With an estimated 19,400 jobs disrupted, California will account for nearly 40% of all jobs likely to have a sufficient number of tasked impacted by GenAI to be either consolidated or replaced nationwide over the next three years (Figure 9). Washington — where Gaming has grown significantly in recent years and the industry location quotient is 4.84 — will feel the effects of job displacement more pointedly by comparison; the state is expected to see over 4,600 gaming industry jobs disrupted by 2026.

24,500

Total Establishments (2022)

390,500

Industry Employment (2023)

86.7%

Share of GenAI Early Adopters (2023)

52,400

Industry Jobs Disrupted by GenAI (by 2026)

13.4%

Share of Industry Jobs Disrupted by GenAI (by 2026)

Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; Lightcast; CVL Economics Survey (n=60)

[41] The "Gaming" industry analysis in this section includes responses from "Media Streaming Distribution Services, Social Networks, and Content Providers" survey participants.

[42] Anders Christofferson, Andre James, Tom Rowland, and Imogen Rey, "How Will Generative AI Change the Video Game Industry?" Bain & Company Brief, September 14, 2023, https://www.bain.com/insights/how-will-generative-ai-change-the-video-game-industry/.

[43] Dean Takahashi, "ElectricNoir debuts Dark Mode as an AI-generated horror game," Venture Beat, January 18, 2023, https://venturebeat.com/games/electricnoir-debuts-dark-mode-as-an-ai-generated-horror-game/.

[44] Dean Takahashi, "Auxuman lets gamers generate multiplayer games on LG TVs using simple text input," Venture Beat, January 31, 2023, https://venturebeat.com/ai/auxuman-brings-generative-ai-multiplayer-games-to-lg-tvs/

[45] Rebecca Cairns, "'Video games are in for quite a trip': How generative AI could radically reshape gaming," CNN, October 23, 2023, https://www.cnn.com/world/generative-ai-video-games-spc-intl-hnk/index.html.

Figure 10: Job Disruption in the Gaming Industry

Impact on jobs in U.S. states with largest Gaming employment concentration by 2026

Note: Location Quotient measures a region's industry employment concentration relative to the United States as a whole. A Location Quotient greater than 1 indicates industry employment accounts for a larger share of the regional economy than it does nationwide.

Source: Bureau of Labor Statistics Quarterly Census of Employment and Wages; O*NET; Lightcast; CVL Economics Survey (n=80)

The vast majority of Gaming firms surveyed have implemented GenAI across the entire production cycle, and nearly 95% of firms use this technology for post-production processes (Figure 11). About 28% of firms use GenAI to generate animation, rigging, and motion capture, 27% to generate lighting and texturing, and 22% to generate storyboards (Table 5). Jobs associated with these tasks include CG Modelers, Concept Artists, Sound Designers and Editors, Special Effects Artists, Animators, and Motion Capture Specialists.

Business leaders expect GenAI to play a larger role going forward in tasks like generating 3D models (55% of respondents); generating concept art and visual development (40%); and generating sound design, and voice generation and cloning (37%). Roughly one in three surveyed predicted job displacement over the next three years for Software Developers, Sound Editors, Software Analysts and Testers, and Special Effects Artists. Roughly 20% reported that the job titles of 3D Artist, Game Designer, UI/UX Designer, and Video Game Tester would be vulnerable.

TOP GENAI PROGRAMS USED IN THE GAMING INDUSTRY:

ChatGPT
(OpenAI)

Imagen
(Google)

AzureAI

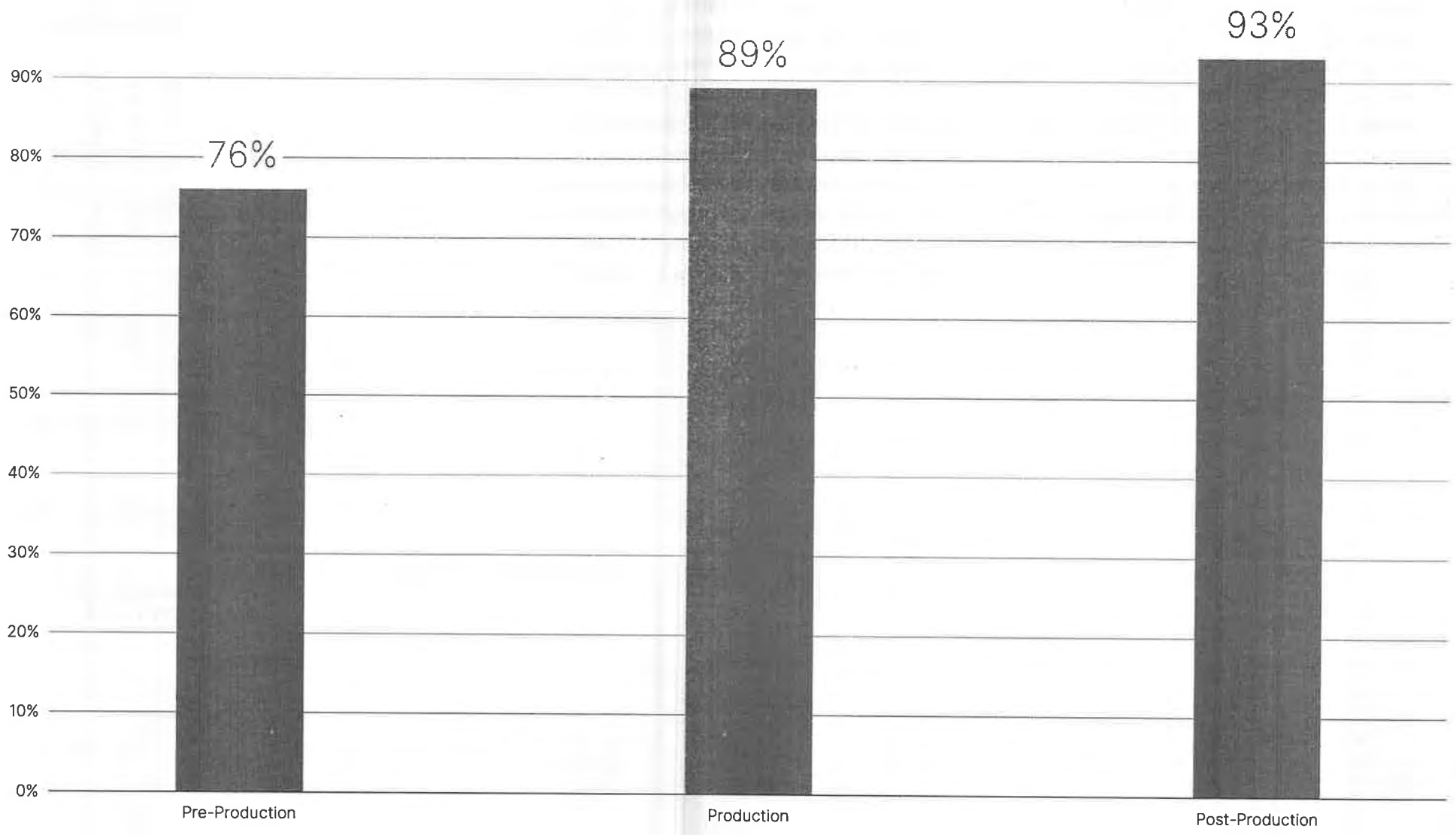
Stable Diffusion

Jukebox MuseNet

Source: CVL Economics Survey (n=60)

Figure 11: GenAI Use in Gaming Industry

Share of Gaming Industry firms using GenAI in each phase of the production cycle



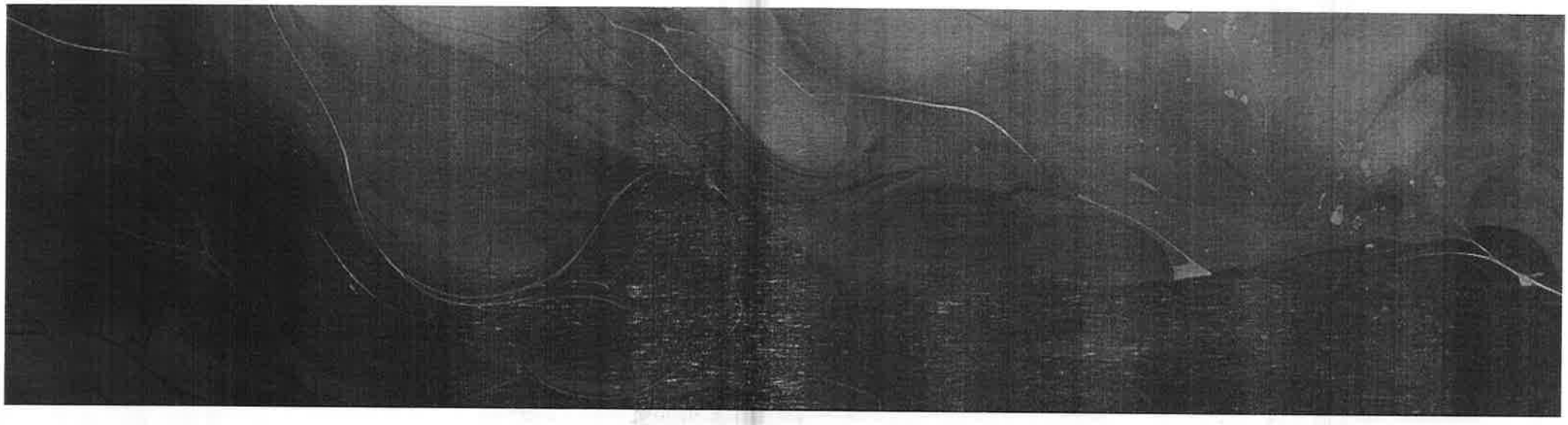
Source: CVL Economics Survey (n=60)

Table 5: GenAI Impact on Gaming Industry Tasks

Share of survey respondents who reported GenAI would impact the following tasks:

TASK		SAMPLE JOBS
3D Modeling	55%	3D Modeler, CG Modeler, Design Engineer, Product Design Manager, Video Designer, Motion Graphic Artist
Concept Art / Visual Development	40%	Concept Artist, Creative Director, Graphic Designer, Technical Artist, Color Designer, Layout Artist, Texture Artist
Character and Environment Design	37%	Illustrator, Concept Artist, Environment Artist, Character Artist, Cartoonist
Sound Design	37%	Sound Editor, Sound Designer, Re-recording Mixer
Voice Generation and Cloning	37%	Sound Designer, Sound Editor, Mix Engineer, Music Editor
Tools Programming	37%	Digital Interface Designer, Broadcast Technician, Software Engineer, Technical Project Manager, Technical Artist

Source: 2023 CVL Economics Survey (n=60); Lightcast

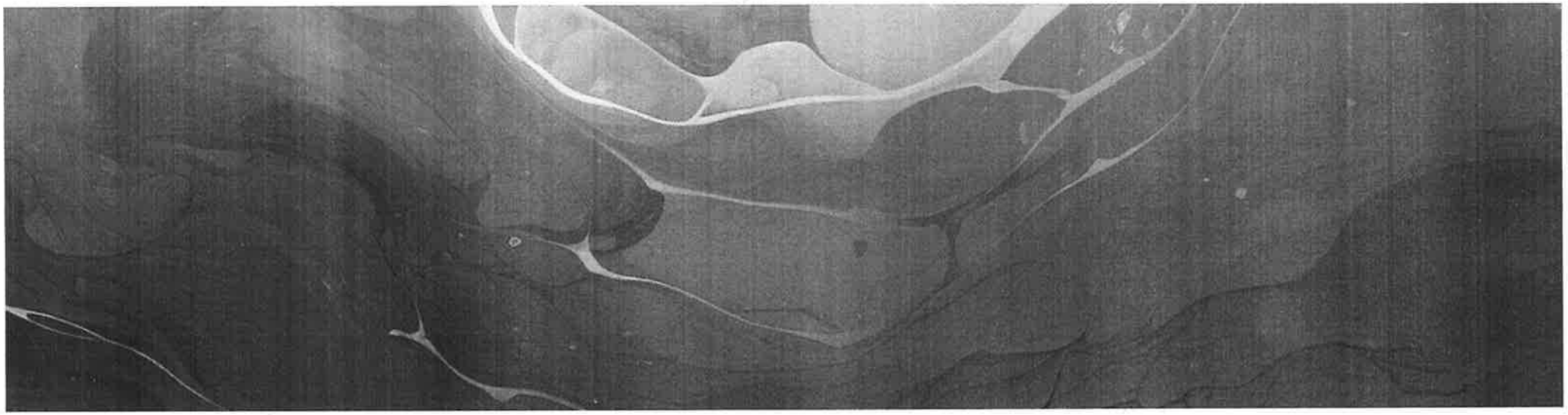


Conclusion

The past two years have been a period of significant advancements in large language models and GenAI visual applications such as Midjourney, Stable Diffusion, and DALL-E, and these trends are expected to continue for years to come.[46]

GenAI technology is not only reshaping workflows across the entertainment industries, but the future of consumer products as well. As demand for VFX in film and television continues to grow, new capabilities and methods will influence the types of stories that are told and the way they are presented. For video game development, new levels of interactivity between player and characters and across virtual worlds will elevate the user experience. GenAI programs that help with songwriting and instrumental arrangements can help musicians expand their horizons. The possibilities are seemingly endless.

At the same time, these advancements have a real human impact. Around 204,000 jobs are poised to undergo significant disruption over the next three years due to the implementation of GenAI programs. Even though this doesn't necessarily translate to 204,000 job losses, nearly every aspect of the entertainment workforce will be affected. On top of the impact on the nature of creative work for existing employees, freelancers, and contractors, the integration of GenAI technology has cascading effects. A large number of displaced jobs will likely be entry- and mid-level positions, which will narrow career development opportunities, work against broader DEIA goals, and hurt professional and economic mobility. Aspiring workers from less affluent and underrepresented backgrounds have historically leveraged these entry-level roles as a pathway into the entertainment industries and to higher-paying positions. More broadly, the elimination of these types of positions means the loss of critical learning and networking opportunities.



As the WGA and SAG-AFTRA strikes revealed, perspectives between industry management and creative workers do not often align, especially regarding the role of GenAI. Where industry management sees growth opportunities, creative workers see an existential risk to their livelihoods. Whether job losses will be offset by job gains has yet to be determined and may ultimately be irrelevant for many current workers in the entertainment industries. For them, putting protections into place now is a more pressing concern.

The future is not yet written, and it needn't be generated by AI. It is important to remember that GenAI output is constrained by its inputs. If the responsibility to generate content shifts away from humans to machines, which can currently only formulate output based on previously created content, the availability and uniqueness of new content brought into the world will become more limited. It is critical that those in leadership positions, especially in entertainment industries, keep this top of mind and ideate on ways that new technologies can expand human creativity, not replace it.[47]

[46] Projections suggest that while high-quality language training data may reach its limits by the early to mid-2020s, image data is expected to sustain advancements well into the 2040s. See Pablo Villalobos, Jaime Sevilla, Lennart Heim, Tamay Besiroglu, Marius Hobbhahn, and Anson Ho, "Will We Run out of Data? An Analysis of the Limits of Scaling Datasets in Machine Learning," arXiv, October 25, 2022, https://doi.org/10.48550/arXiv.2211.04325.

[47] Jason Farago, "AI Can Make Art That Feels Human. Whose Fault Is That?" The New York Times, December 28, 2023, https://www.nytimes.com/2023/12/28/arts/design/artists-artificial-intelligence.html.

Appendix: Methodology

INDUSTRY SURVEY

Between November 17 and December 22, 2023, CVL Economics surveyed 300 leaders (C-Level Executives, Senior Executives, Mid-Level Management) across six U.S. entertainment industries. The survey focused on understanding the impact of Generative AI (GenAI), particularly in such industries as Film, Television, and Animation, and Music and Sound Recording. Key areas of inquiry included the current and anticipated roles of GenAI, its effects on tasks and responsibilities, the creation and/or replacement of job roles and titles, ethical concerns, and perceived benefits and challenges of GenAI implementation. Additionally, the survey focused on specialized industry and occupation skills and tasks; this is in contrast to similar work that relies on "cross functional" skill and task taxonomies that are industry and occupation agnostic.

Film, Television, and Animation
n=120

Newspaper, Periodical, Book, and Similar Publishing
n=30

Music and Sound Recording
n=60

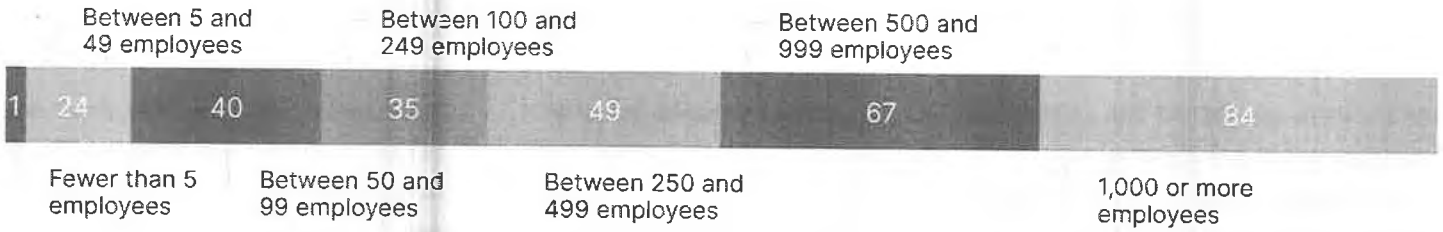
Gaming
n=45

Radio and Television Broadcasting
n=30

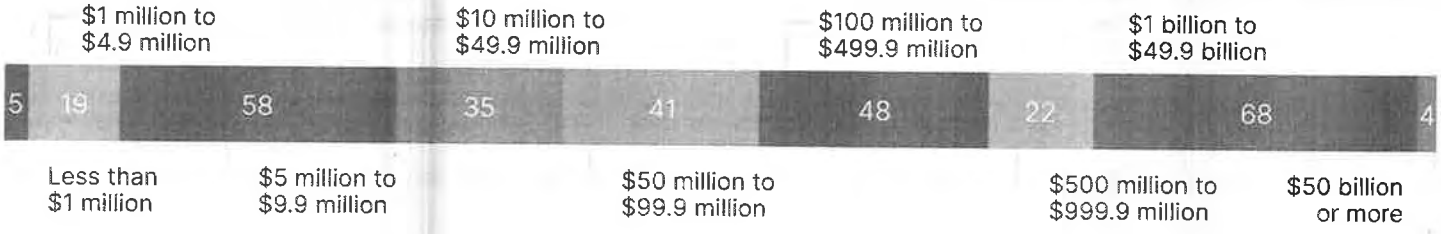
Media Streaming Distribution Services, Social Networks, and Content Providers
n=15

Title
N=300

Number of Employees
N=300



Global Revenue
N=300



JOB DISRUPTION ESTIMATES

The survey targeted business leaders, soliciting their input regarding the influence of GenAI tools, software, or models on specific job titles and specific job tasks within their business divisions over the next three years. Each industry respondent was asked about a set of tasks (a subset of which were industry specific) for which they had implemented or were in the process of implementing GenAI to address. In addition to job tasks, the response options were designed to capture varying degrees of impact, including:

1. Anticipation of job title consolidation due to GenAI tools.
2. Expectation of job title replacement by GenAI tools.
3. No expected consolidation or replacement of job titles by GenAI tools.

Respondents were then asked to provide estimates on the percentage of jobs they expect to be consolidated or replaced. They were also prompted to identify specific occupational roles within their industry and business division that they believe would be most affected. The responses allowed us to calculate a "displacement score" for each of the six industries surveyed, as well as for selected occupations within those industries. This score is a quantitative representation of the expected impact of GenAI on job roles. To enhance the robustness of our analysis, these displacement scores were supplemented with various external datasets. These included industry employment statistics (classified by the North American Industry Classification System, or NAICS), occupational employment data, growth projections, and skill requirements (classified by the Standard Occupational Classification System, or SOC, and O*NET). Additionally, job posting data sourced from Lightcast provided contemporary insights into labor market trends.

SCOPE AND LIMITATIONS

It is important to note that our job displacement estimates focus exclusively on existing (incumbent) jobs. Given the nascent nature of GenAI technology and its evolving capabilities, there is a significant degree of uncertainty around its adoption timeline and future potential. Consequently, our analysis does not extend to estimating or modeling new occupations that might emerge directly from the adoption of AI in the entertainment industries or because of broader labor demand introduced by GenAI technology.

FUTURE UNSCRIPTED:

The Impact of Generative Artificial Intelligence on Entertainment Industry Jobs

January 2024

PREPARED BY:

CVL ECONOMICS

CVL Economics is an economic consulting firm that takes a data-driven, human-centric approach to equitable development and sustainable growth, with a focus on the creative economy. Founded in 2021, CVL Economics partners with communities, municipalities, organizations, and institutions to address today's most complex challenges and foster bold action. Coupling our robust economic models with innovative research methodologies, we provide decisionmakers with the actionable insights needed to effect change, expand opportunity, and improve economic well-being.

https://www.cvleconomics.com/

COMMISSIONED BY:

CONCEPT ART ASSOCIATION

Concept Art Association is an organization committed to elevating and raising the profile of concept artists, their art and their involvement in the entertainment industries.

https://www.conceptartassociation.com/

THE ANIMATION GUILD

The Animation Guild, also known as Local 839 of the International Alliance of Theatrical Stage Employees (IATSE), was founded in 1952. As a labor union, it represents more than 5,000 artists, technicians and writers in the animation industry, advocating for workers to improve wages and conditions.

https://animationguild.org/

THE HUMAN ARTISTRY CAMPAIGN

The Human Artistry Campaign was launched at SXSW 2023 for open dialogue and guidance from the united creative community in the AI debate. The growing alliance supports seven core principles for keeping human creativity at the center of technological innovation.

https://www.humanartistrycampaign.com/

THE NATIONAL CARTOONISTS SOCIETY FOUNDATION

The National Cartoonists Society Foundation is the charitable arm of the National Cartoonists Society, the world's largest and most prestigious organization of professional cartoonists.

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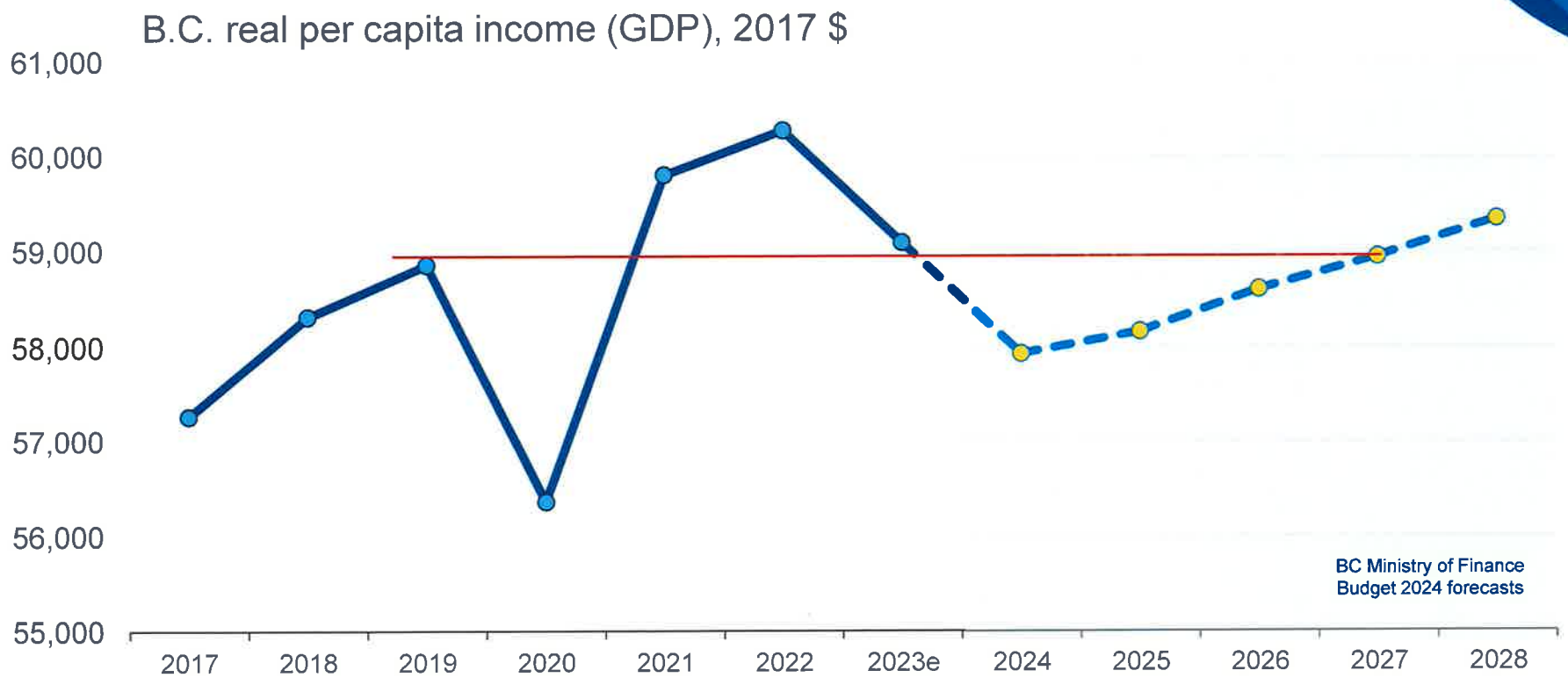
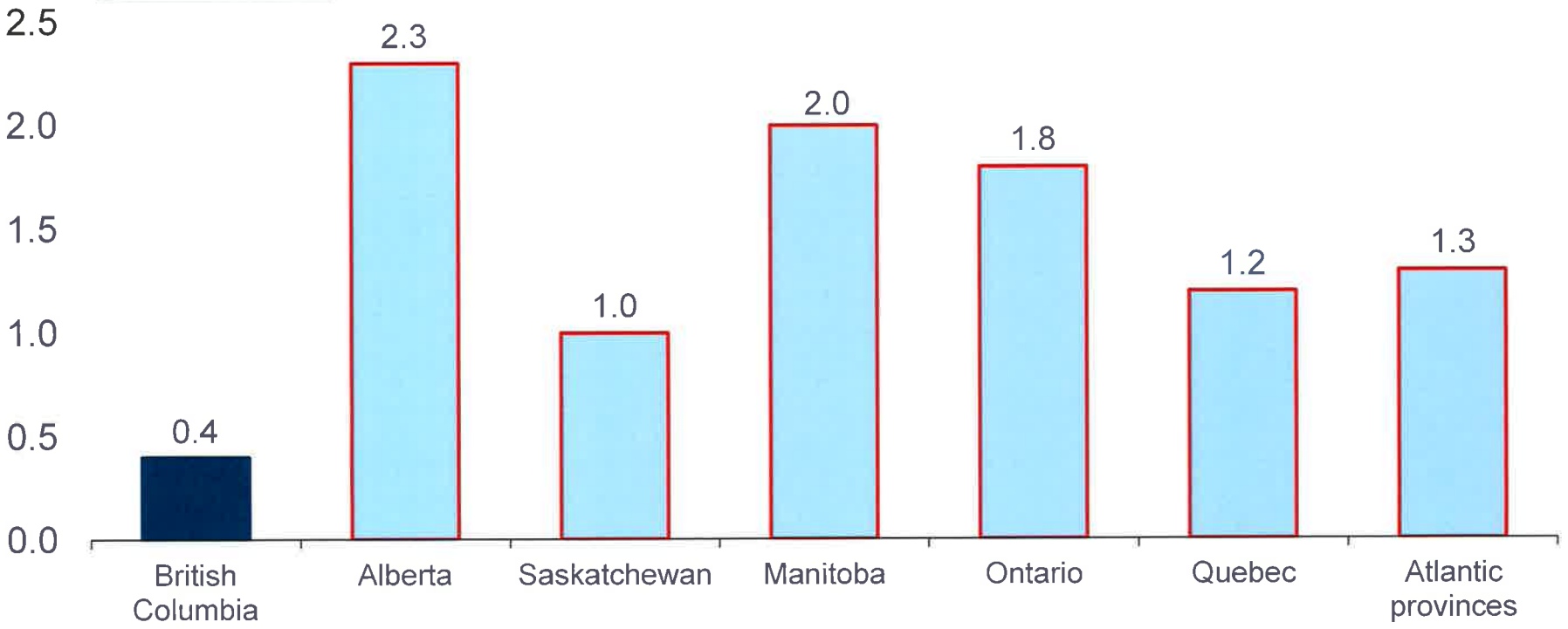
LOST DECADE FOR B.C.?



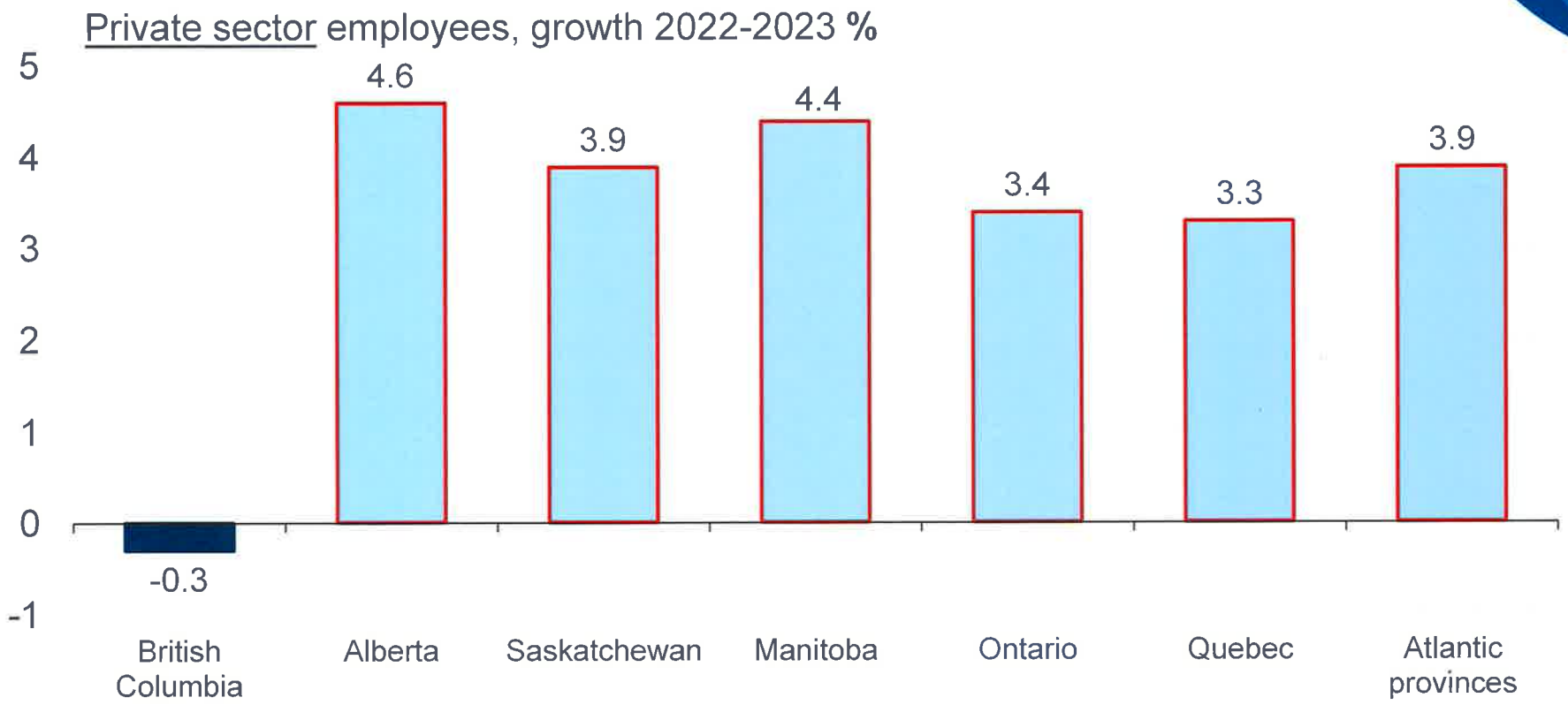
Source: Statistics Canada Table: 36-10-0222-01 and 17-10-0005-01; 2023 to 2027 BC Budget 2024

ALL PROVINCES RECORD HEALTHY PRIVATE SECTOR JOB GROWTH... EXCEPT B.C.



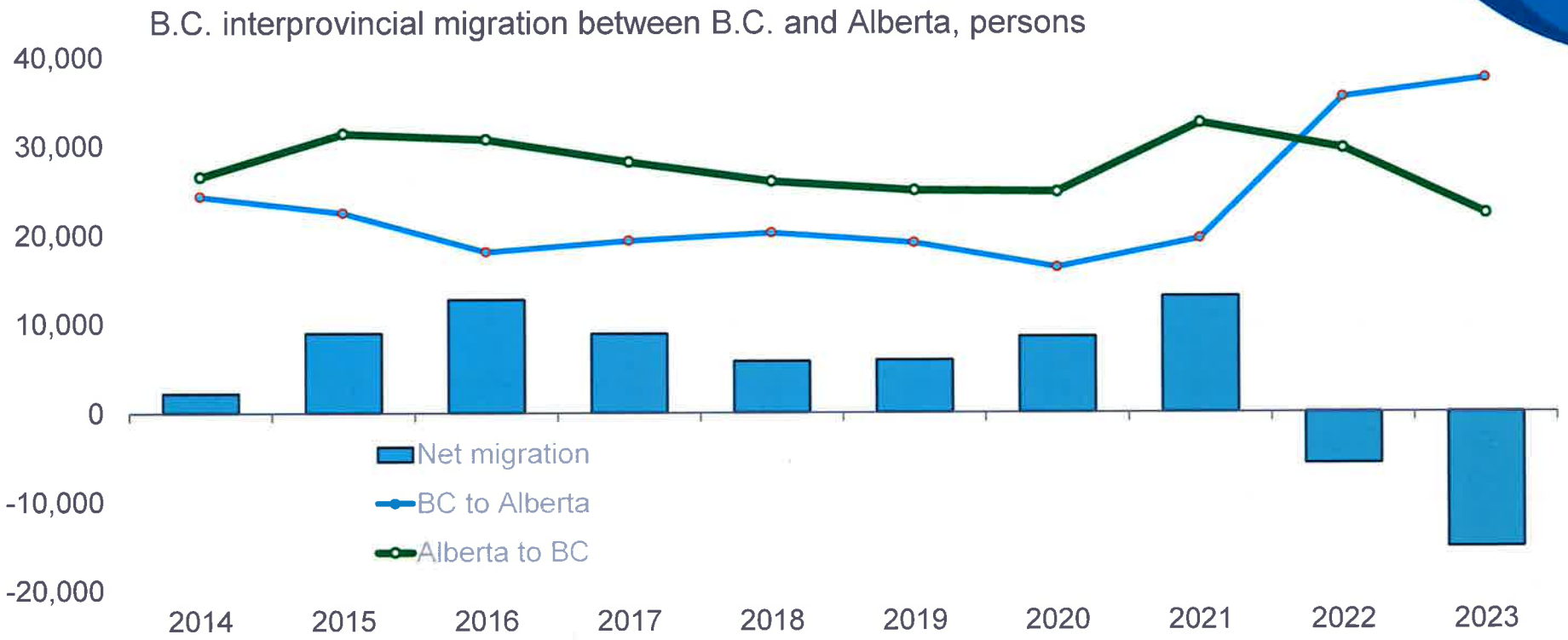
Source: Statistics Canada, CANSIM Table: 14-10-0288-01.

PRIVATE SECTOR EMPLOYMENT DOWN IN B.C. WHILE ALL OTHER PROVINCES RECORD STRONG GAINS



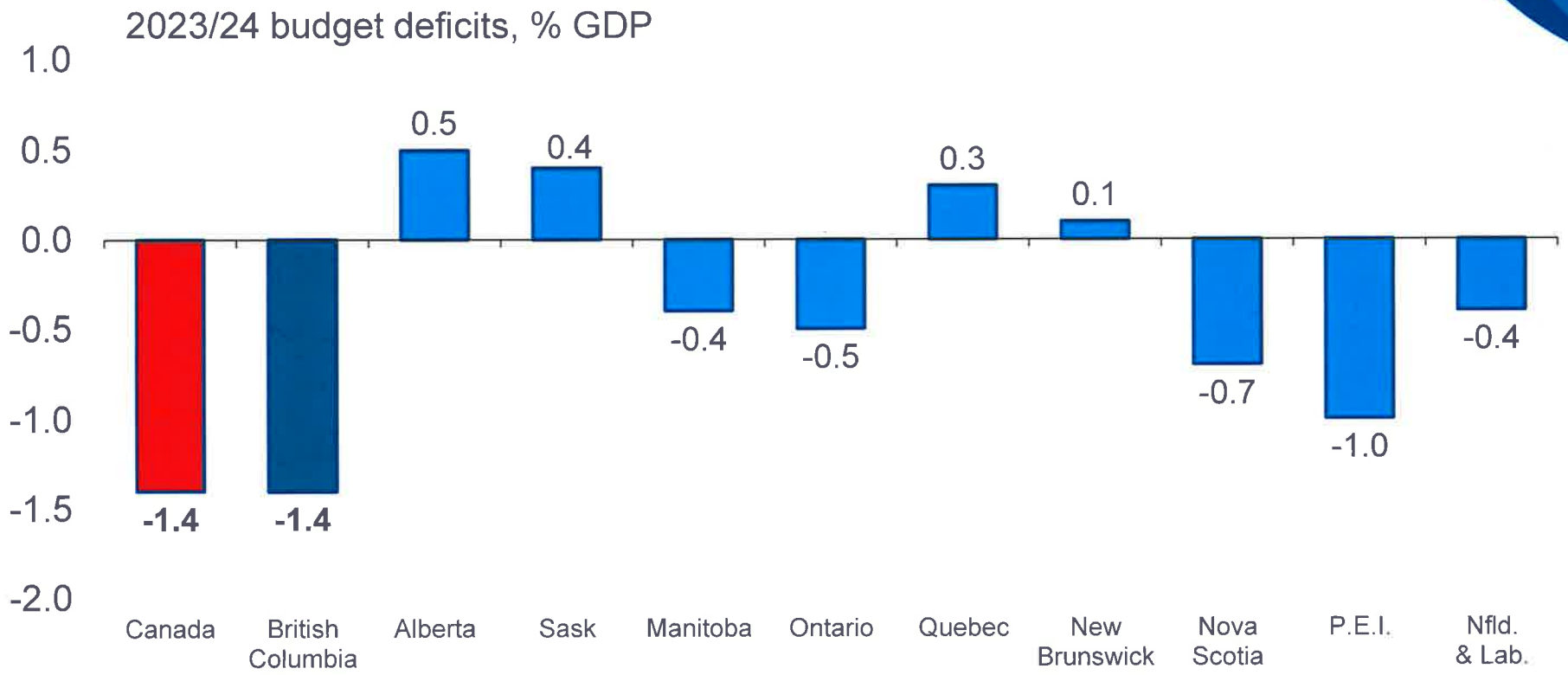
Source: Statistics Canada, CANSIM Table: 14-10-0288-01.

BRITISH COLUMBIANS MOVING TO ALBERTA IN RECORD NUMBERS



Source: Statistics Canada, Table 17-10-0020-01.

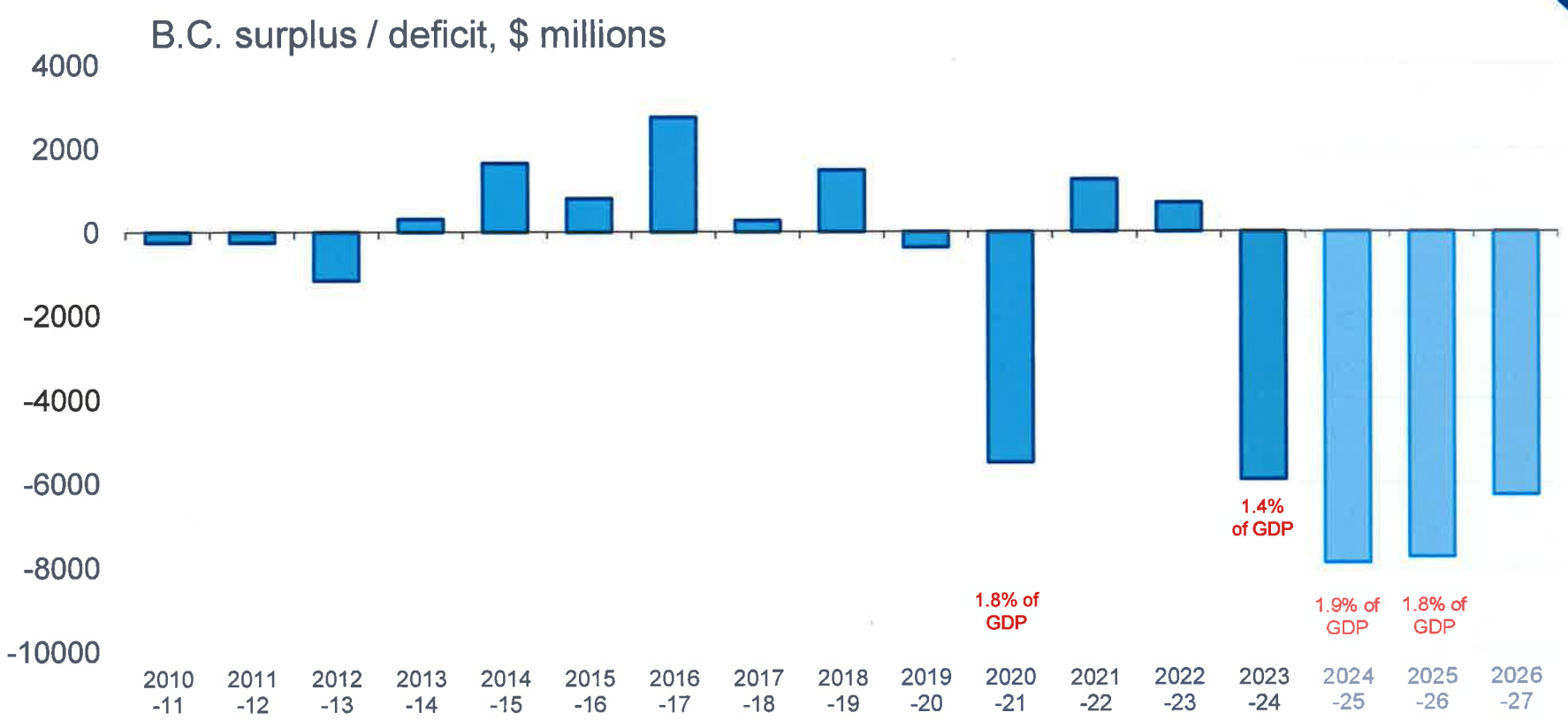
B.C. RAN LARGEST PROVINCIAL DEFICIT IN FISCAL 2023/24



Business Council of British Columbia Est. 1966

B.C. Third Quarter Update, Federal Fiscal Update and BMO Economics.

GOVERNMENT PLANNING FOR RECORD DEFICITS



Source: BC 2022 Financial and Economic Review and 2024 BC Budget.