Submission to the *Labour Relations Code Review Committee* regarding:

Proposed changes to the *BC Labour Relations Code*

Submitted by:
BC Building Trades

March 2018

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SUMMARY

The BC Building Trades welcomes the opportunity to make this submission to the BC Labour Relations Code Review Panel.

The BC Building Trades is the umbrella organization for the 28 local unions that work in British Columbia's building, construction and maintenance industry sectors. There are over 35,000 highly skilled and unionized construction workers in BC. The BC Building Trades has access to over 400 employer partners.

We advocate for building and maintaining a highly skilled and qualified workforce to meet BC's labour force demands.

We work with our employers to develop and build our communities while striking a balance between economic, social and environmental objectives, thus ensuring both prosperity and sustainability for future generations.

We welcome this opportunity to make the following recommendations to the BC Labour Relations Code Review Panel.

Our Position

A first priority, the BC Building Trades requests that this Review Panel recommend to the Minister that he establish a separate panel to review construction labour relations. The construction industry is unique, which means that the application of standard labour relations law results in a skewed and inappropriate interpretation of the existing law. The construction industry requires a Code that addresses definitions, certification procedures, bargaining processes/structures, and dispute resolution mechanisms.

The relationship of workers to the workplace and to their employers is vastly different in construction than in 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.

The special nature of the construction industry and the unique labour relations setting that it produces must be recognized if we are to develop a legislative framework that allows balanced economic relations between consumers, management and labour in this industry. That section should have a purpose clause that recognizes the distinctive features of the construction industry. In particular, it must recognize the transient nature of employment in the industry, the traditional use of union hiring halls to provide contractors with access to a pool of skilled union workers and the resulting need to promote fair, stable, and orderly industry-wide multi-trade bargaining.

Only through a separate review of the construction industry can the need for these fair and balanced changes to the Code be identified.

In addition to a separate review of the construction industry, the BC Building Trades calls for changes that protect workers' rights. These include:

- proper funding for the Board;
- clarity on the definition of common employer;
- changes to raiding provisions;
- strengthening provisions around undemocratic and employer dominated unions;
- enabling remedial certifications and strengthen provisions to prevent intimidation;
- restoring a system of union certification on the basis of membership cards alone; and
- review Section 2 of the Code.

Recommendation #1

Conduct a separate review of the construction industry

The Construction Industry is unique in many ways and every Province in Canada has specific legislation dealing with construction labour relations. In every Province except British Columbia, that legislation is designed to facilitate worker's access to meaningful collective bargaining. In British Columbia, the construction specific provisions of the *Labour Relations Code* (Section 41.1 & Regulation 3.1) are designed to inhibit worker's access to meaningful collective bargaining.

The Construction Industry has several unique characteristics that militate in favour of construction specific labour relations legislation[1]. Construction is characterised by the mobility of both workers and employers. It is a cyclical, seasonal, and project driven industry. Construction employers are often small companies that have little capital invested and few if any fixed assets. Construction workers are generally hired on a project by project basis and have no expectation of long term employment. In contrast, the *Labour Relations Code* is designed for fixed industries where workers have stable long term employment and where employers have capital invested in fixed assets.

The unique features of the construction industry make it very difficult for workers in the industry to access their rights under labour legislation. Even if a group of workers is able to become organised during the life of a project, they will likely be laid off before a first collective agreement can be reached. Under our current laws, laid off workers have no right to be recalled when their former employer starts a new project.

As a result of the unique nature of the construction industry and the barriers that exist for workers in the industry to access their fundamental collective bargaining rights, **every other province in Canada** has legislation dealing with construction labour relations which is designed to make it easier for construction workers to have meaningful access to collective bargaining

In British Columbia, the last comprehensive review of construction labour relations was conducted in 1997. The Construction Industry Review Panel (Lanyon & Kelleher) was asked to look at whether construction specific labour relations legislation was necessary and, if so, to recommend appropriate legislation. At page 1 of the Panel's report *Looking to the Future, Taking Construction Labour Relations into the 21st Century*, the Panel concluded: "We agree that construction is unique and merits separate consideration in the Labour Relations Code." The Panel recommended a comprehensive scheme for Industrial, Commercial and Institutional (ICI) construction labour relations. The government accepted the recommendations and enacted Bill 26 in 1998.

The new Legislation established a limited form of sectorial certification in the ICI construction industry. It provided for a rational and balanced system of collective bargaining in the construction industry and provided employees with meaningful access to collective bargaining.

Unfortunately, these construction specific provisions of the *Labour Relations Code* were removed by the Liberal Government soon after being elected in 1991. In their place, the Liberals enacted Section 41.1 & Regulation 3.1 which were intentionally unbalanced and designed to inhibit access to meaningful collective bargaining. Section 41.1 in particular has resulted in building trade unions being subjected to a wildly dysfunctional and unfair system of

[1] The Commission de la Construction du Quebec describes the unique features of the Industry on its website: http://www.ccq.org/en/A_QuiSommesNous/A05_IndustrieConstruction/A05_1_CaracteristiquesIndustrie

collective bargaining[2].

This system needs to change. Unlike every other Province in Canada, BC has legislation designed to inhibit access to bargaining by construction workers. The current BC Labour Relations Code Review Panel will not likely be able to deal adequately with the issues confronting the construction industry. The 1991 Committee of Special Advisors (John Baigent, Vince Ready and Tom Roper) were tasked with reviewing the construction industry but had to defer that mandate because they did not have the time or resources needed to deal adequately with construction.

We believe that the current BC Labour Relations Code Review Panel will face a similar problem and that in any case, the unique nature of the construction industry requires a dedicated and focused review panel.

Recommendation #2

Establish proper funding for the Board

Sixteen years of underfunding have resulted in the dysfunction of the Board. Lack of staffing resources for the Labour Relations Board have meant that Industrial Relations Officers do not have the time to investigate employer payroll records to establish eligible voters for mandatory certification votes. Instead the IROs rely on employers to determine the provisional list of voters. We have also seen unacceptable delays in the administration of hearings and arbitrators' decisions.

The construction industry is unique. Each work site may involve quite different types of construction and will employ a changing group of workers from a variety of trades or skill groups. Workers are called to work individually and may be required for only one or two days at a time and may be laid off and recalled several times during the course of a particular project according to the specific skill requirements of each stage of construction. The employer is not required to call a particular employee back for subsequent stages of the work or even to retain that employee from one project to the next. There may be dozens of companies working on the same site, each performing only a small part of the work.

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.

Recommendation #3

Clarify the definition of common employer

The Code must be amended to clarify the definition of common employer to prohibit double breasting. Employers are currently able to manipulate existing certifications by re-organizing

[2] Some of the problems with the way bargaining has evolved under this system were described in "Interim Report regarding a Section 41 Inquiry into Labour Relations in the British Columbia Building Trades Sector of the Construction Industry": http://www.lrb.bc.ca/decisions/REPORT%20-%20S%20%2041%20(FINAL).pdf
See also the decision of Labour Relations Board in *BC Insulators* BCLRB No. B121/2014
http://www.lrb.bc.ca/decisions/B121$2014.pdf

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.

The Code must be amended to clarify the definition of common employer to prohibit double breasting.

Recommendation #4
Change raiding provisions and ability to negotiate a new contract

The Code should be revised to require employers to re-open collective agreements after successful raids. These re-openers are especially required if the original collective agreement was not ratified by employees once the project was up to its full complement of workers.

Previously, the two-month “raid” vote window for construction unions was legally set for the busy summer months, July and August. Changes to the Labour Code currently allow a raid to take place during the low employment periods (e.g. November, December). This enables those employers with employer-friendly organizations dressed up as unions to permanently insulate themselves from the accountability resulting from a raid action by crewing down to its loyal workers.

The raiding period for construction unions should be during the busy construction season, in July and August. Moreover, this is traditionally when more workers are on site, which serendipitously increases democracy through sheer numbers alone.

Recommendation #5
Strengthen provisions around undemocratic and employer dominated unions

The Labour Relations Board should be empowered to receive complaints, conduct investigations and audit internal election processes of unions that are alleged to be undemocratic and/or employer dominated. If after investigations, 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.

Recommendation #6
Enable remedial certifications and strengthen provisions to prevent employer intimidation

The workplace is not a public space. The employer controls access to the workplace both legally and practically. Union organizers are not allowed access to job sites and employers can censure the distribution of information favourable to the union.

In contrast, employers can require that all employees attend meetings to propagate the company viewpoint against unionization.

In the absence of remedial certifications, employers have had a free hand to commit unfair labour practices and unions are forced into costly litigation processes. Gathering evidence and arguing the merits of these complaints is a huge annual expense incurred by building trades unions.

We ask the BC Labour Relations Code Review Panel to remove the so-called “employer free-speech” provisions in Sections 6 and 8 which allow employers to conduct aggressive anti-union campaigns and increase the use of remedial certification in cases of unfair labour practices.

Recommendation #7

Restore a system of union certification on the basis of membership cards alone

The board should restore a system of union certification on the basis of membership cards alone. It is critical that workers be allowed to exercise their right to organize without having to run the gauntlet of employer evasion tactics.

Mandatory votes are inevitably stalled to take place on the last possible occasion (the 10th day) after the certification application. During the 10 days before the vote, employers will hold “captive audience” meetings to pressure workers to vote no to the union application. Employers may orchestrate a competing application from another employer-friendly “union” to confound the workers’ bid for real representation. Employers will single out weaker workers and try to pry information or pressure these “weak links” to reject the union certification bid.

We share the BC Federation of Labour position that the choice of a union is the result of a dialogue between workers and a trade union, and ought not be unduly fettered by the requirement that workers confirm their initial decision to sign a membership card by also participating in a certification vote.

Recommendation #8

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 that Code “fosters the employment of workers in economically viable businesses.” This section of the Code has been used successfully by employers to justify interference with workers’ rights (to strike, to organize, to decertify) and deny worker rights.

Conclusion

The construction industry is unique. A thorough and separate review of the industry is required to modernize the Code as it pertains to construction and ensure the needs of workers and employers are fairly balanced with regulations that make sense to our distinct industry.

The cyclical, seasonal, and project-driven nature of the industry puts workers at risk and the Code must be revised in several areas if we are to bring fairness back to British Columbia’s labour relations system. We have made a number of recommendations in this submission and welcome the opportunity to continue our dialogue as the Code is being reviewed.

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