CLAC
better together

BC LABOUR RELATIONS CODE REVIEW

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INTRODUCTION

CLAC is pleased to make these submissions to the **BC Labour Relations Code Review Panel**.

Formed in 1952, CLAC is a national union representing over 60,000 workers in almost every sector of the economy. Based on values of respect, dignity, and fairness, CLAC is committed to building better workplaces, better communities, and better lives.

CLAC is generally supportive of the current labour law regime in the province, and 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, and 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.

Please consider submissions as follows:

1. **Section 19 Raids**
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    b. Protecting employee confidentiality
2. **Membership Evidence in Support of Certification**
3. **Representation Votes**
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4. **First Collective Agreements**
5. **Composition of the Labour Relations Board**
6. **Labour Force Inclusiveness**

We address each in turn.

OUR RECOMMENDATIONS
Section 19 Raids

Open period frequency

There has been a gradual, significant decline in the percentage of BC's private sector work place represented by trade unions. BC's relative decline in the unionization of its workers has been greater than in any other province. Moreover, the decline in BC, unlike in the rest of Canada, has continued into this century.

Galarneau and Sohn Long Term Trends in Unionization

www.statcan.gc.ca/pub/75-006-x/2013001/article/11878-eng.pdf

Legislation may well be responsible for a limited role in this decline. BC's legislation compares favourably to other Canadian jurisdictions in most matters, including with respect to the ease of certification, and protections provided to organizers and employees to ensure that employer intrusions upon the process are limited to permissible freedom of expression.

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. All organizing costs money and large organizing drives are very expensive. Realistically, employees are far more likely to engage in the decision-making process of whether to become unionized if they are being organized actively by professional representatives of trade unions.

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 BC's legislation that substantively encumbers access to unionization is the frequency with which trade unions can engage in raid campaigns under Section 19 of the Code.

In terms of organizing targets, a work place that is already unionized is the low hanging fruit. Organizers can be certain that these employees favour unionization, as that question has already been answered.

It would not be surprising if some unions expend more resources engaging in raid campaigns and defending against them than they do introducing and promoting unionization to unorganized work places.

We certainly respect the right of employees to have a reasonable opportunity to change their representation. However, there are sound reasons to limit this opportunity in a way that balances that right with the paramount goal of the Code: genuine access to unionization.

Our Recommendations
Section 19 Raids

The norm across other Canadian jurisdictions is to limit the right to raid to the third year following certification. We propose that this norm be adopted in British Columbia.

As stated earlier, organizing is expensive. As a practical matter, the legislation should not encumber a union put to that expense to defend its successful organizing efforts so soon after it has established its right to bargain collectively.

We note also that there is evidence to support the contention that raid activity will be on the rise going forward. There have been recent defections from various umbrella groups that typically have established no-raid pacts among their members.

Canada's largest private sector union, Unifor, has left the house of labour expressly because of restrictions imposed upon its ability to raid.

From the Unifor newsletter:

> *www.unifor.org/en/whats-new/news/facts-unifors-disaffiliation-clc*

In fact, Unifor's targets are US based unions. Besides Unifor, the four largest Canadian private sector unions are all US based.

> *https://www.canada.ca/en/employment-social-development/services/collective-bargaining-data/reports/union-coverage.html*

The BCNU has also decided in recent years to engage in a significant raiding strategy.

A non-union work force does not have genuine access to unionization when the opportunities to even meet its proponents are artificially limited. When unions are too busy annually raiding and defending raids, they don't have the financial or human resources to organize underserved non-unionized work places. In our view, the expansive statutory right to annual raiding constitutes such a limitation.

At the very least, the norm across other Canadian jurisdictions ought to be adopted in BC.

Pertaining to newly organized workplaces, there are other reasons why it is poor policy to permit a raid to occur only months following certification. Organizing campaigns usually create rifts among employees on either side of the issue. Employees who were opposed to unionization have not had much time to establish a rapport with their new representatives. The first collective agreement is often the most difficult to reach. It is the agreement most likely to create winners and losers as historical anomalies are remedied, seniority is defined, and wage rates are adjusted.

The first round of collective bargaining will address these issues of significance, but also set expectations and influence planning for successive rounds of bargain-

ing. Gains are often made over multiple renewals, but expectations are often very high following a certification drive. These realities also promote the likelihood of raiding activity sooner rather than later, even if the union has acted responsibly and competently. In short, raids are not team building exercises. The union is entitled to let the animosities, and the hard and hurt feelings, settle for a reasonable time before facing a raid.

Raids are certainly disruptive to the business activity and its profitability. Where profitability wanes, so too do opportunities for unions to increase the economic welfare of their members. Workplace disruption effectively takes money out of the pockets of employees.

It is illusory to think that employees do not engage in constant debate about the merits of a raid campaign during working hours. At the end of the day, the loss of productivity is a cost that is borne by both the employer and its employees. BC's legislation invites a substantive, annual intrusion upon the productivity of a business and the corresponding jeopardy to the economic well-being of the employees.

Rarely do democratic processes established by legislation contemplate a vote to replace duly elected representatives so soon after the first ballot has been counted. In fact, the trend has been to increase the time between elections, not to abridge it, including legislative change to enlarge the time between elections for municipalities and First Nations elective bodies.

Not only may raid applications during the early stages of a collective bargaining relationship have especially harmful and irreversible impacts upon a work place, they are also often seriously disruptive. Accordingly, in our view the raid period should also be changed for renewal agreements.

We support a raid period in the third year of the collective agreement, first or otherwise, during its seventh and eighth month. As stated earlier, while raids are disruptive, the same is equally true of the period when parties are engaged in collective bargaining, which most often occurs during the last few months of the collective agreement.

We anticipate a request that the Review Panel consider a return to the short-lived requirement that raids be confined to particular calendar months unrelated to the collective agreement. We oppose any such suggestion. The raid period should be based exclusively on the realities of the collective bargaining relationship. The seventh and eighth month best preserve the likelihood that there are no extraneous considerations while a raid is under way.

Bargaining proposals taken to the table by a union may well be seeking to advance the legitimate interests of certain employees in favour of others. This is more likely the case where the relationship is a recent one, and

the union is seeking to redress perceived uneven treatment within the work force. Raiding unions have an easy job of gaining a foothold by appealing to any group that feels disaffected during bargaining.

Protecting employee confidentiality

There is a second feature of the raiding legislation which unduly favours raiding unions over an incumbent.

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 his or her 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 competition between unions.

The current legislative scheme purports to endorse employee democracy within work places 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 have more than one employer in a given 90 day period (during which membership is evidence of union support for certification), particularly in the service, retail health care and construction industries. Most unionized work places adopt a union or closed shop requirement to require that employees become members of the union to maintain employment. The membership card of an employee—who is a union member elsewhere—is currently valid evidence of support for unionization at any different work place operated by any different employer. A union in such circumstances can exercise economic control over that employee.

The object of a raid is to freely allow a majority of employees at a given work place to make a democratic choice with respect to union representation. Disclosure of an employee's true wishes to revoke support for unionization at a different work place is completely at odds with the respect for privacy otherwise afforded to employees.

As a result of the current practice, there are situations in which employees are compelled to sign membership cards during a

raid and, effectively, are unable to revoke their support because of concerns that they may be denied employment opportunities in the future, either with the raiding local, or their sister local/affiliates.

Similarly, where a member of a union relies upon that membership for health and pension benefits, but that employee does not want the union to become the bargaining agent at their current work place, revocation could of course have alarming consequences. The right to "revoke" is again illusory, even where no coercive or intimidating conduct is engaged in by the organizing union. That card will count as support for the application, even though a fair revocation process would permit that employee to express his or her true wishes to the contrary. 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.

We support the right to revoke membership in confidence for the purposes of the specific application being considered before the Board.

We further support an amendment to provide that revocation of membership during an organizing drive is for the limited purpose of indicating a lack of support for the particular application in question or for the purposes of an application with respect to a particular employer.

OUR RECOMMENDATIONS
Membership Evidence in Support of Certification

We anticipate that there will be numerous submissions in support of card check certification in lieu of the current representation vote requirement. Should the practice of card check be adopted, it should only proceed if the following safeguards are introduced:

- The employer of the signee of the membership card be identified with reasonable certainty (e.g. corporate or trade name, or business address). As stated above, there are many cases where employees have joined a union that have nothing to do with support for unionization at other work places.

- Membership cards must be executed within 90 days of the date of application for certification. Alberta has established legislation to require that membership cards must be executed within the 90-day window preceding application, in order to ensure that the true wishes of employees are determined.

OUR RECOMMENDATIONS
Representation Votes

Timelines

Where a representation vote is required in respect of a Section 18 application, there is no particular rationale in most cases to schedule an in-person vote as late as 10 days after an application is received. We respect that there are administrative challenges on certain occasions. However, the actual work required to be carried out to schedule a vote does not take 10 days.

In our view, with the advance of modern communication techniques, 10 days is unnecessarily long and could allow undue employer influence in the certification process where employees are being newly introduced to the potential for collective bargaining. As such, we propose to amend to 5 days.

The requirement to conduct a certification hearing in every case to conclusively agree upon a Tentative Voters' List is not a compelling reason to delay the conduct of a vote. In many cases, no agreement is reached and the vote is ordered to proceed without incident in any event, with the voting constituency determined at a later date. It is almost always far easier to agree on the voters list after all the parties know who voted.

We support the current practice not to share the voters' list with an applicant for any certification application where threshold clearly has not been met. Where the issue of threshold is legitimately in question, the current practice, which we support, is that the applicant is provided access to the voters' list. Therefore, a quick vote is still possible while the threshold issue is being adjudicated.

We also propose that a Vice-Chair should have the discretion to order an in-person vote beyond the time set for in-person votes generally, where our proposed five-day rule is not achievable. Currently, parties must all agree to waive the ten-day rule. The advantages of in-person voting favour expanding the likelihood that representation votes will be conducted in person.

Electronic voting

No stakeholders in the certification process will argue that mail-in votes are a preferred democratic tool. They are administratively cumbersome to conduct and conclude, and they clearly fail to respect the expedition certification applications are entitled to expect. The process is exclusively in the hands of a third party.

We expect that it is less likely that an employee lacks access to a computer to cast an electronic vote than it is that he or she does not have a reliable postal address to receive a timely ballot.

In our view electronic voting programmes are as reliable as Canada Post, and an electronic vote can be concluded weeks earlier, ensuring expedited access to unionization where it is the will of employees to do so.

OUR RECOMMENDATIONS
First Collective Agreements

Section 55

This section requires that a union must conduct a successful strike vote prior to being eligible to seek first collective agreement arbitration. At the outset of a collective bargaining relationship, one of the very worst ways to promote a productive working relationship between a union and an employer is to conduct a strike vote.

In virtually every case where a Section 55 (1)(b) vote is conducted, the union will tell its members, "We cannot get to arbitration without a positive strike vote". Even if employees are not otherwise inclined to make such a serious economic threat against their employer, the legislation compels them to do so. In such circumstances, to the extent the legislation hopes to determine the true wishes of employees in the unit, the Section 55 (1)(b) strike vote is a fiction.

We are of the view that most employers are inclined to take a strike vote poorly. The reaction to it is rarely positive.

If a vote is required to determine employee true choice, a better ballot question would be

> *Do you favour the union making an application to the Labour Relations Board to appoint an arbitrator to determine the collective agreement or do you favour authorizing the union to engage in a strike.*

We note that Ontario has repealed the requirement to obtain a strike vote to seek arbitration.

OUR RECOMMENDATIONS
Composition of the Labour Relations Board

We support a balanced composition on the Board. While the Board's composition has historically drawn from both the union and the employer communities, there has been no apparent recognition of the fact that independent unions are a large and growing component of the union movement in BC. Much of the Board's case load involves independent trade unions as parties. We propose that to the extent that Board appointees are a reflection of its stakeholders, the size of the progressive, independent union community, particularly in wall-to-wall construction, demands that this community also be represented.

We are opposed to the return of the "member" position at the Board and its concomitant appointment of three person panels to hear original applications. This procedure was a very inefficient use of limited resources of all parties when it was previously in use. Scheduling difficulties alone, already a serious issue in multi-party adjudications, make the process unworkable.

OUR RECOMMENDATIONS
Labour Force Inclusiveness

It is increasingly common for project owners to seek assured labour stability and cost control prior to committing millions, and in some cases billions, of dollars to a project.

We support recognition of the viability of agreements made between unions and contractors to ensure cost control and labour stability. However, we are opposed to any legislative mandate that requires a craft-based construction model for projects, public or otherwise. Further, where Project Labour Agreements (PLAs) are in effect for public projects, such agreements should reflect the realities of the modern construction industry, and ensure that access to work is not restricted by, or limited to, members of select unions.

There have been proposals shared in the media to mandate specific terms and conditions for PLAs for infrastructure projects supported with public funding. A feature of many of these proposals is to restrict which contractors are entitled to bid on projects and the unions that are entitled to crew them. Naturally, these proposals are all self-serving, as in every case the proponent of the closed-shop PLA is always one of its principal beneficiaries.

When they were first introduced, the benefit of PLAs was to ameliorate the myriad of jurisdictional issues associated with craft based construction. However, the labour landscape has changed significantly in recent decades, to such an extent that the vast majority of British Columbia's skilled workforce works in open shop, or wall-to-wall environments (approximately 15% of the construction workforce is affiliated with traditional, closed-shop, craft construction unions). Modern PLAs should be relevant in their approach, ensuring that contractors and members of any union affiliation, as well as non-unionized contractors and employees, are able to apply their trade on public projects.

Modern PLAs should provide a framework for general working conditions and promote labour harmony, while preserving the fundamental right of employees to affiliate freely and without interference.

It is imperative that the Code protect the principle of freedom of Association; to legislate a craft-based construction model would certainly impede an employee's right to organize according to their will.

Further, jurisdictions that have imposed rigid labour relations structures based upon this increasingly unused historical practice have succeeded only to increase the cost burden upon the public at the expense of relatively few beneficiaries. As per the study released by Cardus, "Hiding in Plain Sight" (2014), municipalities experience cost savings attributed to competitive bidding at approximately 20 to 30 percent. Indeed, Cardus estimates that restrictive tendering practices in Ontario result in an excess burden, carried by taxpayers, of up to $238 million above market value each year. As a result, fewer tax

dollars are available to invest in new infrastructure projects, thereby limiting the long-term opportunities for economic advancement for workers. Such models do not truly benefit the public. For these reasons, Saskatchewan and Manitoba have, in recent years, made significant shifts away from such restrictive practices.

In summary, the practice of open bidding and procurement maximizes the full potential of our province's workforce, is fiscally responsible, and preserves an employee's right of freedom of association.