



**Submissions by the United Steel, Paper and Forestry, Rubber,  
Manufacturing, Energy, Allied Industrial and Service Workers  
International Union (United Steelworkers)  
to the Review Panel under Section 3 of the  
British Columbia *Labour Relations Code***

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**Who We Are**

The United Steelworkers is an international trade union with over 220,000 members in Canada, approximately 30,000 of whom work in British Columbia. Steelworkers are men and women of every social, cultural and ethnic background in every industry and job. From our roots in core industrial sectors such as mining and steel, the USW has grown into the most diverse union in British Columbia, representing employees in all areas of manufacturing. As a result of mergers with the Industrial Wood and Allied Workers (IWA) and the Telecommunications Workers Union (TWU), we also have a significant presence in the forest and telecommunications industries, along with a rapidly growing membership in the service sector in workplaces like call centers, retail stores, hotels, banks and nursing homes. Across the country, our Union has been at the forefront of organizing security guards, taxi and truck drivers, and university employees. Workers from coast to coast to coast have sought membership in our union in large numbers over the last twenty years. As a result, we are acutely aware of the importance of a worker's right to join a trade union of their choice without fear of intimidation or coercion, and our experience with varying labour relations regimes across Canada gives us valuable insight into which systems operate fairly and effectively, and which do not.

**The Changing Nature of the BC Economy and Workplaces**

The world of work has changed dramatically over the last fifty years and our members have experienced these changes first-hand. Fifty years ago, the majority of our members were hired by local employers fresh out of high school or college, and stayed working for that employer until they retired – with a solid pension and health care benefits that allowed them to live with dignity.

Today, there are fewer jobs in traditionally higher-paying sectors like transportation, telecommunications, and resource extraction<sup>1</sup>. The jobs that remain in these industries are less stable as employers increasingly rely on contracting out (or contracting in, through the use of

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<sup>1</sup> Over the last two decades in Canada, the number of low-paying jobs has grown faster than both mid-paying and high-paying jobs; in 2015, low-wage jobs grew at twice the rate of high-paying jobs. The result is that “the fastest growing segment of the labour market is also the one with the weakest bargaining power”: Benjamin Tal, “Employment Quality – Trending Down”, *Canadian Employment Quality Index*, March 2, 2015, p. 2-3.

temporary agency employees) in an effort to reduce labour costs and increase profit<sup>2</sup>. At the same time, wages have stagnated, benefit coverage is more restrictive, defined benefit pension plans are being eliminated for younger workers and pension benefits cut for senior employees.

While jobs in manufacturing and resource extraction have declined, there has been a corresponding increase in service-sector positions characterized by low wages, weaker benefits, less job security, more limited training, and reduced opportunities for career development. At the same time, we have seen a steep rise in self-employment and contract work in the province, as fewer British Columbians enter into “traditional” employer-employee relationships. These trends, coupled with a low union density rate brought about by 15 years of unbalanced labour policy, have produced growing levels of income inequality.<sup>3</sup>

### **Unions in a Changing Economy**

It is critical that workers have a collective voice as they navigate these dramatic economic changes. 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....”<sup>4</sup>. Represented employees are better off than their non-union counterparts. Union members have a significant wage advantage over corresponding non-union employees. This is especially so for historically disadvantaged groups, like women and aboriginal workers, for whom unionization helps mitigate systemic wage disparities<sup>5</sup>. Union members are also more likely to have access to health and welfare benefits and pension income upon retirement.

Unionization is a benefit not only to union members, but all Canadian workers. Economic gains won at the bargaining table have a positive effect on the terms and conditions of employment of non-union employees in the same industry, as employers match union wages and working

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<sup>2</sup> Temporary employment in British Columbia grew from 24% of permanent new jobs between 2004 and 2013 to 40% of new employment created between 2009 and 2013. See Andrew Longhurst, “*Precarious: Temporary Agency Work in British Columbia*”, July 2014, p. 5-6.

<sup>3</sup> In British Columbia, the Gini coefficient (a measure of income inequality) grew from an average of .29 over the 1980s and 1990s to .33 between 2000 and 2009. Further, BC has the largest income gap among the Canadian provinces as measured by comparing the lowest and highest 20% of earners. See BCStats, “Mind the Gap: Income Inequality Growing”, *Business Indicators, Issue: 12-01*, p. 2-3.

<sup>4</sup> *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] S.C.J. No. 27.

<sup>5</sup> 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 male 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. See research summarized by the Canadian Labour Congress at <http://canadianlabour.ca/why-unions/provincial-and-territorial-breakdown/british-columbia>.

conditions in order to attract and retain employees. Further, union-led campaigns for law reform have improved the lives of employees by pursuing public policy which protects workers, not just profit. The USW was instrumental in the passage of the *Westray* amendments to the *Criminal Code*, which impose significant penalties on employers whose criminal negligence results in the death or injury of their employees. The USW also successfully lobbied for the introduction of the federal *Wage Earner Protection Program Act*, which provides a fund for employees left unpaid by an insolvent employer. These positive gains for employees are made possible by a strong trade union movement built by employees who have exercised their right to bargain collectively.

## **Recommendations**

Access to collective bargaining is more important than ever in today's workplace and economy. However, the current *Labour Relations Code* undermines workers' ability to access their right to bargain collectively. The USW therefore proposes, in addition to the recommendations made by the British Columbia Federation of Labour, that the Government make the following changes:

1. Foster certainty and efficiency in the certification process by restoring card-based certification;
2. Ensure fair treatment of workers by amending sections 6(1) and 8 of the *Code* (employer interference in certification process);
3. Restore balance to the *Code* by amending the purpose clause to reflect the interests of both employers and workers;
4. Bring BC in line with other jurisdictions by extending the period for which membership evidence is valid; and
5. Create stability and security for vulnerable and precarious workers by ensuring access to successorship and common employer provisions of the *Code*.

We will address each of these recommendations in turn.

**Recommendation 1: Foster certainty and efficiency in the certification process by restoring card-based certification**

To protect the right of employees to join unions if they so choose, while minimizing the opportunity to commit unfair labour practices, the *Code* should be amended to restore card-based certification. Such an amendment would also mitigate the delay and uncertainty that is invited by mandatory votes.

Card-based certification was the norm in British Columbia from 1973 to 1984 and again from 1993 to 2001. However, a few short months after being elected in May 2001, the BC Liberal Government passed Bill 18 which, among other things, eliminated card-based certification in favour of mandatory representation votes. Notably, they did so without consulting the public or the labour community.

The implementation of a mandatory representation vote process in British Columbia has had serious consequences for labour relations in the province. Since its implementation, the number of employees in BC who have been able to exercise their right to join a trade union has declined. Indeed, today British Columbia has below-average union density compared to other jurisdictions in Canada.

The Union's public polling data indicates that the drop in union organizing cannot be explained by a decrease in employee interest in joining unions. Recent polls conducted by the USW show that in 2015, nearly three in ten (28%) non-union employees who are eligible to join a union want one. When asked if they would join a union if they were guaranteed there would be no reprisal against them by their employer that number jumped to 40%.<sup>6</sup>

Further, studies conducted by labour relations experts support the view that mandatory representation vote regimes are deeply undemocratic in their treatment of employees and provide greater opportunity for employer interference in employee free choice.

In 1992, the NDP government appointed a three-person panel, comprised of Vince Ready, John Baigent, and Tom Roper, Q.C., to review the Province's labour laws. The panel's report was critical of mandatory representation votes, observing that they open the door to illegal employer interference in the selection of a trade union:

The surface attraction of a secret ballot vote does not stand up to examination. Since the introduction of secret ballot votes in 1984 the rate of employer unfair labour practices in representation campaigns in BC has increased by more than 100%.

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<sup>6</sup> Vector Poll, *The Vector Poll on Public Opinion in Canada*, United Steelworkers, July 2015, p. 39.

...

The simple reality is that secret ballot votes and their concomitant representational campaigns invite an unacceptable level of unlawful employer interference in the certification process.<sup>7</sup>

In 1995 the federal government asked a commission chaired by Andrew Sims, Q.C. to review possible amendments to the *Canada Labour Code*. The Sims Commission considered whether to move away from a card-based certification system and require mandatory representation votes. The commission rejected such a change, and in doing so concluded:

We are not convinced that the statute should make representative votes mandatory. The card-based system has proven to be an effective way of gauging employee wishes and we are not persuaded that it is unsound or inherently unconvincing to employers. It requires a majority of all workers, not just those who vote. It reduced the opportunities for inappropriate employer interference with employees' choice.<sup>8</sup>

The same conclusion was reached three years later, in 1998, when the BC Government struck a Section 3 committee (comprised of Vince Ready, Stan Lanyon, Miriam Gropper, and Jim Matkin). The committee had this to say about mandatory votes:

We continue to believe that the risk of increased incidence of unfair labour practices during certification outweighs any advantage in using the secret ballot during the certification drive. We believe that other responses from the public research – namely that 74% of the respondents supported tough penalties against companies who engaged in unfair labour practices during union organizing as well as legal protection for employees before their first agreement – lend support to our conclusion.<sup>9</sup>

More recent empirical evidence supports the conclusion that employer interference with employee choice is more effective when governments remove the right of employees to join trade unions by means of card check and introduce mandatory representation votes instead. In a 2004 study reviewing twenty years of certification procedures in British Columbia, UBC researcher Chris Riddell found that not only did certification success rates decline by almost 20% following a move from card-based certification regimes to mandatory representation votes, but management

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<sup>7</sup> John Baigent, Vince Ready & Tom Roper, *A Report to the Honourable Moe Sihota: Recommendations for Labour Law Reform*, (Sub-Committee of Special Advisors: September, 1992).

<sup>8</sup> Andrew Sims, Rodrigue Blouin and Paula Knopf, *Seeking a Balance, Review of Part 1 of the Canada Labour Code*, 1995 Report for the Federal Minister of Labour, p. 62.

<sup>9</sup> Vince Ready, Stan Lanyon, Miriam Gropper & Jim Matkin, *Managing Change in Labour Relations: The Final Report*, (Section 3 Committee, February 25, 1998), p. 7.

opposition, as measured by unfair labour practices, was at least twice as effective in the voting regime as in the card-check regime.<sup>10</sup>

A similar conclusion was reached in an earlier study by former British Columbia Labour Relations Board Chair Stan Lanyon and his colleague Robert Edwards, who collected data that confirmed a link between abandonment of card-based certification and a rapid rise in the successful use of illegal tactics by employers against organizing employees. As a result, the authors concluded:

The use of representation votes as a condition of certification does not further democratic rights, but instead serves the interests of the employer who would wish to influence his employees' decision on the question of union representation.<sup>11</sup>

Findings in research studies conducted in Ontario mirror the conclusions reached in other jurisdictions. In her study of Ontario's labour laws following the introduction of a mandatory vote system, York University Professor Sara Slinn found evidence that the legislative change to a mandatory vote system had a disproportionate impact on weaker and more vulnerable employees:

It is clear that the overall proportion of certification applications resulting in a certificate being issued is substantially lower in the Bill 7 period than in the Bill 40 period. It is also apparent that the characteristics of applicants seeking certification, and of those units granted union certification are significantly different....The apparent shift under the Bill 7 period towards larger bargaining units, and away from part-time units and the service sector, is a matter of concern to both policy-makers and unions. The majority of job growth in the private sector is in smaller workplaces and in the service sector. This shift therefore suggests that Bill 7 has had a disparately negative effect on relatively weaker employees, such that employees who may most benefit from unionization are less able to access union representation.<sup>12</sup>

[emphasis added]

The Union is well aware of the opposition in the employer lobby to the return of card-based certification. Employers and other supporters of the mandatory vote system advance the pretense that representation votes are democratic and equivalent to any other kind of election process, including political elections or referenda. Despite a superficial and simplistic similarity, there is no equivalency between a political election and a union representation vote. Union representation

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<sup>10</sup> Chris Riddell (2004) "Union Certification Success under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998", *Industrial & Labor Relations Review*, Vol. 57, No. 4, article 1, p. 509.

<sup>11</sup> S. Lanyon & R. Edwards, "The Right to Organize: Labor Law and its Impact in British Columbia" in S. Hecker & M. Hallock, eds., *Labour in a Global Economy: Perspectives from the U.S. and Canada*, (Eugene, OR: Labor Education and Research Center, University of Oregon, 1991).

<sup>12</sup> Sara Slinn, "The Effect of Compulsory Certification Votes on Certification Applications in Ontario: An Empirical Analysis", 10 *Canadian Labour and Employment Law Journal* 399 at p. 428-429.

votes are unlike any other kind of “election” because of the inherent coercive power that employers hold over employees – the power to control employees’ pay, hours and working conditions or even to deprive employees of their livelihood.

In an election when voters choose their Member of the Legislative Assembly, they determine who will represent citizens within the context of a democratic system, and, indeed, which party will form the government. In a union representation vote, the issue is not which “party” will direct the enterprise, but instead whether employees will have democratic bargaining and representation rights at all. A successful union organizing campaign does not allow workers to choose a new workplace “government”. A successful union campaign leaves the employer in the position of governance, with employees now simply securing legal guarantees of basic rights of “voice and vote”.

The comparison between a political election and a union representation vote breaks down further still if one considers the actual circumstances in which a union representation campaign occurs. In theory, employees are supposed to be allowed to engage in union-related communication in the workplace during non-work time, but, given the reality of most workplaces, this right is elusive at best and non-existent in most instances. The right of employees to communicate with each other about union membership is severely restricted by the inherent characteristics of most workplaces and by management directive and actions. The actual environment and context in which employees consider union membership is far different from that which the *Code* seeks to establish. The *Code* provides a range of freedoms and rights that may be clear and self-evident to legal practitioners but which are all too often chimerical when workers attempt to put them into practice in the real world.

For example, as the Board’s jurisprudence makes clear, absent extraordinary circumstances, employees cannot be prevented from taking part in discussions and other activities regarding unionization that take place in the workplace before and after working hours, or during lunch periods or coffee/rest break times, even if they are paid for such lunch or break times. But in most workplaces, employees know full well that ‘in reality’ they have no such right and that their union-related communication or activity in the workplace is not adequately protected. Employees know viscerally that indeed most employers actively discourage such activity and will not in any way countenance union discussion in the workplace at any time.



On the other hand, employers and managers have easy and unrestricted access to employees while they are at work. Employers and managers maintain full control of the workplace. They know the number of employees in the workplace, and can easily speak with them in person or by means of electronic or other forms of communication which they control. As well, employers and managers have the home addresses and telephone numbers of employees, allowing easy contact with employees when they are not at work. Employees and their chosen unions have no such lists and no equal capacity to communicate, either in or out of the workplace. Union-related communication between employees in the workplace is most often hidden in furtive conversations where employees hope they are out of sight of managers or away from the increasing presence of electronic surveillance. Often, such communication is relegated to conversations in the local Tim Horton's as employees look over their shoulders to keep an eye out for supervisors, or the handing out of flyers on the edge of company parking lots.

And even if employees are able to start talking about unionizing and trying to build a support level that would get them a vote, in many instances they are faced with the important question "How do we know how many people actually work here?" Only employers know the actual number of employees that they employ. Employees and their chosen unions, especially in larger or dispersed workplaces, begin and often end campaigns with no firm knowledge about how many employees there actually are. This challenge is aggravated in workplaces with complex shift arrangements and by the increasing use of contractors and temporary or casual labour arrangements. And if a vote eventually happens, it is most often held in the workplace, an environment fully controlled by the employer and to which the union is given only brief access solely in the voting area. Meanwhile, the employer remains free to campaign throughout the rest of the workplace at all times prior to and during the vote.

Contrast all of that with elections for political office. Far from having to sign up a significant percentage of electors (as in union organizing campaigns), candidate eligibility in a political election is achieved with a nominal number of signatures from people in the riding. Candidates operate from identical voters' lists with equal contact information and campaigns operate under common spending limits. Voters are under no fear that voting for a certain candidate or party might actually place them in danger of losing their employment. Balloting takes place on neutral ground and campaign activities are banned from the entire area. And the winner actually takes office, whereas a successful union vote merely provides employees with the right to bargain.

Furthermore, as a tool of progressive public policy, card-check certification procedures promote healthy relationships between employers and employees by helping to avoid a pitched battle between management and workers during a certification campaign. In a representation vote, voting in favour of the union is often characterized by the employer as tantamount to a vote “against” the employer. Therefore, card-check certification procedures promote healthier labour relations in the workplace by avoiding the workplace polarization that often results from anti-worker campaigns encouraged by a vote-based system.

In summary, there is just no basis for stating that British Columbia’s current vote-based system for achieving union representation is democratic. Indeed, the evidence suggests that mandatory representation votes are precisely the opposite: such regimes give employers better and more effective opportunities to thwart employee wishes and affect the outcome of certification applications. The only procedure for the selection of a trade union that takes into account the fundamental realities of the employment relationship is a card-check certification regime such as currently exists in Quebec, Alberta, Ontario (for certain sectors), and federally.

**Recommendation 2:           Ensure fair treatment of workers by amending sections 6(1) and 8 of the Code (employer interference in certification process)**

The 2002 amendments to sections 6(1) and 8 of the *Code* (the so-called “free speech” provisions) unfairly tilted the balance of power in favour of employers. A return to the pre-amendment language would safeguard workers’ constitutional right to freedom of association and would foster harmonious labour relations by keeping divisive campaigns out of the workplace.

Prior to 2002, the *Code* simply prohibited employers from interfering with employees attempting to unionize. The *Code* provided that an employer “must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it.” While section 8 entitled employers to express certain views about their business, that right was a limited one, allowing employers to “communicate to an employee a statement of fact or opinion reasonably held with respect to an employer’s business” [emphasis added].

As a result of Bill 42, however, section 6(1) was made expressly subject to section 8, which, in turn, greatly expanded the scope of what employers were permitted to say and do. The new language provided that “a person has the freedom to express his or her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.”

Thus, Bill 42 allowed employers to campaign against unions by saying anything they want, including about unions generally, provided that the statement can be characterized as a “view” (which is broader than the predecessor “statement of fact or opinion reasonably held”).

In the litigation that followed in the wake of Bill 42, the Board construed these changes in a way that was especially problematic for trade unions. In *Convergys Customer Management Canada Inc.*, BCLRB No. B62/2003 (upheld on reconsideration: BCLRB No. B111/2003), the Board held that the amendments meant that employers could make statements that were incorrect or unreasonable (as long as the statement is not an outright lie). For instance, it was open to the employer to imply that the union is dishonest and untrustworthy, even if that “view” was an inaccurate and unreasonable one.

That expansive view of the Bill 42 amendments was cemented by the reconsideration panel in *RMH Teleservices International Inc.*, BCLRB No. B188/2005 [partially overturning BCLRB No. B345/2003], in which the Board bluntly stated that the effect of these amendments was to permit employers to undertake “political style anti-union campaigns” and that this is even the case during working hours.

It is difficult to overstate the impact of these changes to the *Code*. Prior to 2002, workers could exercise their right to discuss and debate the merits of unionization and, if enough employees chose to become members, they could become certified often before the employer ever found out, preserving their ability to exercise their right to decide whether to form a union in a context that was untainted by the employer’s influence. With the elimination of card-based certification and amendments to sections 6(1) and 8 of the *Code*, the employer will usually have at least 10 days’ notice prior to a vote (or more, if the Board orders a mail ballot, which has become more prevalent in view of the Board’s under-funding) to engage in an outright anti-union campaign in which the employer can say or do almost anything with impunity. It has become “open season” on trade unions.

The result has been a stunning 78% decline in the number of certifications granted annually (comparing the Board’s statistics for the card check period of 1994-2001 to the period after Bills 18 and 42).

Consider that statistic in view of the fact that the right to bargain collectively is an exercise of workers' constitutional right to freedom of association. A labour relations scheme which dramatically limits the ability of workers to exercise that fundamental right is unfair, unbalanced, and outdated. The *Code* must be amended to protect the right of workers to freely associate – and bargain collectively, if they so desire – unimpeded by the influence of those who write their paycheques. The *Code*, and the manner in which it has been interpreted, has failed to keep pace with modern Canadian labour law jurisprudence. The Supreme Court of Canada, in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, recognized that collective bargaining and the right to be represented by a trade union promotes democracy and reflects Canadian values such as dignity and equality. More than ten years later, it is time to modernize the Labour Relations *Code* to reflect those values.

**Recommendation 3:            Restore balance to the *Code* by amending the purpose clause to reflect the interests of both employers and workers**

The “purposes” section of the Labour Relations *Code*, which guides the interpretation of the *Code* and the development of the Board’s policy, is – as a result of Bill 42 – imbalanced, and should be amended to more fairly reflect the values of workers (not just employers).

In 2002, section 2 of the *Code* was amended to place additional emphasis on developing “workplaces that promote productivity”, and an additional purpose was added at the behest of the employer community: the Board’s duties must now be exercised in a manner that “fosters the employment of workers in economically viable businesses” [emphasis added].

The USW understands well the need for employers to be “economically viable”. The difficulty with this amendment is not the addition of this language *per se*, but the fact that it imbalances the purpose clause by adding language which reflects only the interests of the employer community without consideration for the values and objectives of labour.

A healthy and robust labour relations regime is one in which larger social objectives are furthered by carefully balancing the sometimes conflicting interests of business and labour. That is why the *Code* must be interpreted through a lens which recognizes and values the needs and interests of workers as equal partners in an economic relationship.

To restore balance to section 2 of the *Code*, the simplest solution is to remove the one-sided amendments brought by Bill 42. Alternatively, the USW recommends that section 2 be amended to

reflect the values of working people – values that are held in tension against the employer objectives of “productivity” and “economic viability”. For instance, those exercising duties under the *Code* should be required to exercise those powers in a manner which promotes workers’ “dignity, equality, and liberty”, and which “fosters the employment of workers in safe and healthy workplaces”. These are values broadly shared by ordinarily British Columbians and their inclusion in the “purposes” clause would help to restore balance to a system which for 16 years has been unfairly tilted in favour of the employer community.

**Recommendation 4:           Bring BC in line with other jurisdictions by extending the period for which membership evidence is valid**

Extending the “lifespan” of membership evidence is necessary in order to reflect the increasingly precarious nature of modern employment and to ensure that British Columbian workers have the same opportunities for union representation as those enjoyed in other Canadian jurisdictions.

Presently, an application for certification must be supported by membership evidence that is no more than 90 days old (see section 3(c) of the *Labour Relations Regulation*, B.C. Reg. 9/93). This is out of step with the realities of modern workplaces and with the regulations in Alberta, Ontario, and the federal sector, all of which have undergone recent reviews.

The 90-day life of a membership card serves as a barrier to accessing collective bargaining rights. Workplaces are increasingly decentralized and “virtual”, making employee contact more challenging. The quintessential industrial worksite – the large, single-location site with a “front gate” outside of which union campaigners may make contact – is becoming increasingly rare. Of the remaining workplaces that fit that description, they are often in remote regions that are inaccessible by trade unions absent an access order from the Board. All of this makes for longer campaigns that stretch beyond the 90 day period during which membership evidence is valid.

This is compounded by the increasingly precarious nature of work. As noted at the outset of our submissions, temporary work and the use of contractors is on the rise. The rate of turnover we see at workplaces is higher than ever. By the time an employee signs a union card, his or her term may be coming to an end. Ironically, this frustrates workers’ access to collective bargaining in some of the workplaces where there is the highest need for a collective voice.

The current 90-day expiry period for membership evidence is short compared to most of the other Canadian common law jurisdictions:

Jurisdiction	Expiry Date
Canada (Federal)	6 months
British Columbia	90 days
Alberta	Six months
Saskatchewan	90 days
Manitoba	Six months
Ontario	One year
New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island	Approximately 3 months

We note that in the jurisdictions where reviews have more recently occurred (Alberta, Ontario, and federally), membership evidence is valid for six months to a year. It is only Saskatchewan and the Maritime Provinces that have a shorter expiry period.

Extending the expiry period to six months would be consistent with Alberta and the Federal sector, and would modernize the British Columbia system by reflecting the structure and organization of today's workplace. It is a small measure which would have a meaningful impact on the ability of workers to obtain union representation if they so choose.

**Recommendation 5: Create stability and security for vulnerable and precarious workers by ensuring access to successorship and common employer provisions of the Code**

Expanding the application of sections 35 and 38 of the *Code* and extending their application to the health services sector would foster labour relations stability and protect workers' access to collective bargaining.

At the same time that working people have operated under a labour relations scheme that has been tilted in favour of employer interests, employment security has declined. As described earlier in these submissions, employment in today's workplace is markedly less secure than that of earlier generations, as employers turn to contracting out and the use of temporary workers to cut costs and enhance profits. This is a significant threat to labour relations stability and undermines the benefits for which workers negotiate collectively. The cruel irony is that if employees do manage to unionize despite a mandatory vote after ten days of openly anti-union campaigning by their employer (now permitted under section 8 of the *Code*), and are able to secure a first collective agreement, the employer can effectively circumvent that agreement by re-assigning work to contractors or related entities. The employees' right to bargain collectively is undone, in effect, by the stroke of the employer's pen.

The use of contractors and related entities is especially widespread in certain sectors such as forestry, where the increasing reliance on contractors has seriously undermined negotiated collective agreement entitlements and generated significant conflict and litigation, which does nothing to further stable and harmonious labour relations in the sector.

The problem is especially acute in the case of “contract flipping”. Where employees work for companies which contract with other entities for the provision of services, and that fixed term contract is then re-tendered and awarded to another company, the employees are terminated without any continuing rights, notwithstanding that the work continues to be performed, often in a near identical fashion. In some cases, the laid-off employees of the “losing” contractor take “new” jobs working for the “successful” contractor doing the identical work, but do so as notional new hires, losing the benefit of the collective agreement that governed their previous relationship.

What is so troubling about the “contract flipping” issue is that many of the workers in the contract services sectors are low-wage workers, often racialized, female, immigrant workers, and otherwise marginalized. These are the workers who stand to gain the most from collective bargaining, and where unionization serves the broader social purpose of narrowing systemic wage disparities. It is these workers who are most likely to lose what they gain through contract flipping.

Although this issue has gained prominence over the past 15 years in health care and other public services sectors, it has also emerged, as noted, as a significant issue in the logging and forestry industry since the early 2000s. In that sector, our members face losing decades and decades of hard-fought gains in their collective agreement simply because the Government removes forest land from a TFL and transfers it to another entity, or because a licensee sells forest lands to another licensee (where no equipment is sold as part of the transaction), or where a Bill 13<sup>13</sup> contractor sells their volume of work to a licensee. In each case, the place and scope of the work remains the same. Nonetheless, these situations are not generally captured by the successorship provisions of the *Code* as it presently worded, and as a result, workers are left with no rights in respect of the harvesting work that continues on these lands.

While sections 35 and 38 of the *Code* (the successorship and related employer provisions) are intended to remedy the mischief which flows from contracting out and contract flipping, they are generally ineffective in doing so as they are of relatively narrow application. We recommend that

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<sup>13</sup> *Timber Harvesting Contract and Subcontract Regulation*, B.C. Reg. 22/96.

these provisions be expanded to address the growing use of contractors, and to mitigate the harm that flows from contract flipping. In the case of the forestry sector, in particular, the current provisions do not reflect the unique characteristics of that industry, where it is the forest land *per se* (rather than, for instance, equipment) which is the defining features of a business. We therefore also suggest that these provisions be amended to reflect the distinct structure of the forestry sector such that successorship runs with the harvesting work attached the land on which the work occurs. While it is beyond the scope of these submissions to propose specific statutory language to reflect these concerns, we are happy to do so if it would assist the committee.

At the very least, whether sections 35 and 38 are expanded as recommended, it is imperative that full access to these protections be restored for workers in the health services sector. In 2002, the previous government enacted the *Health and Social Services Delivery Improvement Act* (Bill 29), which, among other things, exempted sections 35 and 38 from application to health sector employers and their contractors. As a union representing a growing number of health care employees, we know that these workers are among the most marginalized. The limitations that Bill 29 has placed on their rights are especially oppressive.

Restoring the full application of the *Code* to health services workers and expanding sections 35 and 38 to address the growing problems of contracting out and contract flipping would create stability and security for vulnerable and precarious workers by ensuring that collectively bargained rights continue in the face of employer reorganization.

## **Conclusion**

British Columbians deserve decent work. Fair, balanced labour laws which reflect the modern economy and workplace are crucial to achieving that goal. In the USW's view, implementing the above recommendations will ensure that BC workers have the same rights and protections as those enjoyed by other Canadians, will create fairness for working people in BC, and will better reflect the way the economy and workplace have changed since BC's last review of the *Code*. Ultimately, we submit that these changes will help provide British Columbians with decent and sustainable work so they and their families can live with dignity.