INTRODUCTION

Hello I am Ian Gordon the president Of the North Okanagan Labour Council and member of CUPE 3523 Central Okanagan school workers, and my co presenter is Carole Gordon former NOLC president, member of the BCTF, local 23 Central Okanagan Teacher Association.

Our labour council is a collection of over 40 affiliated public and private unions in the Okanagan valley between Peachland and Armstrong representing over 10,000 members. We meet monthly, share union and worker experiences, and advocate for all workers, both unionized and non-unionized

We recognize that individual unions and the BC Federation of Labour have made, or will be making, submissions to the Review Committee. Those submissions contain much more history and details specific to those unions. While we agree with the submission of the BC Federation of Labour, we want to provide a perspective reflective of the Okanagan.

We must start by thanking you for this opportunity to present today. As it has been 15 years since the last review, we can't stress enough that a review of the Labour Relations Code, as per section 3, needs to happen more frequently.

Much can happen in 15 years. There have been 4 provincial elections, 3 premiers, even more Ministers of Labour, and over 5 different North

Okanagan labour council presidents. Thousands of jobs have been privatized in this region, many have flipped employers & contracts, and there has been extensive work to protect the rights of those workers as their collective agreements were vapourized. Dozens of times we have been called to support a union's job action, including walking the picket line, or in some cases an employers' lock out of its employees. Recent Supreme Court of Canada rulings have affirmed the right to join a union, engage in meaningful collective bargaining, and the right to strike when bargaining reaches an impasse. So much has happened that requires reflection and consultation.

In addition to the need for regular review, it is essential that more funding be provided to initiate and complete the work of the Labour Relations Board. This includes enough resources so that certification votes are not delayed or conducted by mail for cost efficiency purposes.

More human resources are also needed to ensure workers' rights to fair and timely resolution, so that timelines for arbitrators' decisions can align with those of the vice-chairs.

Continuing on to specific aspects of the Code, we can start by affirming our support for the ban on replacement workers in section 67. However, our concerns can be summarized in 3 areas: organizing & certification, successorship, and essential service.

Organizing & Certification

A large percentage of the Okanagan is employed in precarious work, especially the retail and hospitality sector, where part-time work with no job security and low wages are common place. While unionization can be more difficult, it can also be more necessary for vulnerable workers, especially where a significant power differential exists between the employee and employer. In personal situations, we speak about the culture of consent – where there is a power differential, consent can't truly exist. In work situations, when the employee signs a card to join a union, the Labour Code gives the employer, the person holding all of the power, ample time and access to convince the employee otherwise. The same vulnerability that caused them to seek out a union does not disappear in the time between signing the card and the secret ballot.

To this end, we have a few recommendations:

Section 14 -- Employers should not be able to unduly interfere with a person's Charter-protected right to choose a union. Where employees are affected by unfair labour practices, remedial certification is the only answer.

Section 8 needs to be repealed – The Liberal government granted the employer unfettered ability to dissuade employees from joining a

union. This advantage was not granted to the union. The employer can conduct captive audience meetings and disperse anti-union messaging IN THE WORKPLACE. Sanctioning of these tactics was not extended to the union. Employer speech is not aligned with recent Supreme Court decisions that protect the rights of workers to organize and choose between unions. Section 8 has to go.

Section 19 – The open period for workers to choose between unions needs to be set to a regular place in the calendar year in order to avoid confusion. Transparency needs to exist to ensure workers can avail themselves of their Charter right to choose between unions.

Section 24 -- We recommend 50% +1 as an appropriate threshold for automatic certification using membership cards alone. The Liberal government brought in a two-step process of certification: signing a membership card and casting a ballot at a later date. This resulted in a higher rate of unfair labour practices and significantly lower rate of unionization. The period between signing the card and the secret ballot intensified the vulnerability of the worker and gave an unfair advantage to the employer for whom the right to association does not exist. If it is a Charter right to choose to join a union, why must a worker in British Columbia be forced choose twice?

We concede that where the 50% +1 threshold is not met, a vote of the workers may be required to confirm certification. In these cases, we recommend a reduction in the prescribed time to conduct a vote from within ten days currently set out in the Code to not more than two working days. As previously stated, this should be an in-person vote only unless agreed to otherwise by all parties.

Successorship

Successorship is the principle that workers' rights and benefits that come from their union membership and their collective bargaining agreement are not lost as a result of business operation changes. Successorship laws provide job security and make sure that employers cannot undermine the efforts of workers to organize and bargain collectively simply by selling off all or parts of their business.

Successorship provisions of the BC Labour Relations Code stipulate that if a business or part of it is sold, leased, or transferred, the new owner is bound by any collective agreement in force at that business on the date of sale. Wages, benefits, and rights contained within the collective agreement apply to the new employer and bind them to the same extent as if they had signed the original agreement with the employees and their union. They are considered the "successor" employer.

However, the BC Liberals took further steps to limit successorship in health care by passing Bills 29 and 94, which limit the application of Section 35 of the Code. These laws have allowed employers to evade collective bargaining responsibilities and terminate employees in a manner which undermines the intent of successorship protection in the first place.

Current successorship legislation does not apply to contracting out or to contract flipping, and is silent with respect to changes in private service providers. As a result, legally obtained certifications and freely negotiated collective agreement rights simply disappear as a result of a business decision to contract out. This has become a feature of work in British Columbia for many health care, utility, food service and construction workers

The application of Section 35 of the Code is limited in the health sector by the Health and Social Services Delivery Improvement Act (Bill 29) and the Health Sector Partnership Agreement Act (Bill 94).

Bill 29 prevents Section 35 of the Code from applying to an entity that contracts with a health sector employer. This means that a person who contracts with a health sector employer cannot be determined to be the successor of that employer.

Bill 94 extends that protection against a finding of successorship to designated private sector partners. This means that an entity that contracts with a private employer who is in a P3 (Public Private Partnership) arrangement with a health sector employer cannot be determined to be the successor of that private employer.

As a result of these changes, we have seen a reduction in wages and working conditions for workers in these sectors, and a loss of industrial

stability across the sectors because of the high turnover this produces. The advantages of this system go entirely to employers, while workers see their Charter rights to organize to improve their working conditions eroded by the architecture of the Code. The absence of successorship provisions in the Code encourages employers to exploit these conditions, resulting in greater insecurity for workers and the services they deliver to BC's public.

In order to level the playing field, we recommend that the application of Section 35 be broadened to prevent subverting collective agreements through contract flipping. This will also require the repeal of the statutory successorship exemptions in health care; specifically, a repeal of Sections 6 of Bill 29 and of Sections 4 and 5 of Bill 94

*What we just read was directly from the BC Federation of Labour submission to this Committee. To honour the workers whose collective agreements were vapourized over the past 15 years, their history and the role the Labour Relations Code and legislation played in it, needs to be repeated in every room in this province. In the health care sector, this is primarily a women's issue. And while we have seen housing prices, both rental and ownership, skyrocket along with utilities in the Okanagan, most of these workers went from above living wages to minimum wages, seniority meaning something to being non-existent,

and from a pension leading to security in retirement to wondering if they'll ever be able to afford to retire at all. It has to stop. Because working FOR the public, shouldn't give you less rights if government privatizes your job.

Education as an Essential Service

We understand that there are some services so essential to the preservation of life that workers in these areas are not able to withdraw their services when bargaining reaches an impasse. The levels of essential services can significantly undermine the bargaining power of the union and should only be used in "life and limb" situations, as reflected in international law.

However, in 2001, the BC Liberal government extended essential services legislation to education and while education is very important to society, it is NOT a "life and limb" service.

In 2002, the ILO noted that the education sector is not an essential service in the strictest sense of the term and stated that the Canadian government should repeal the legislation so that teachers can exercise their right to strike in accordance with the freedom of association principles.

In 2015, the Supreme Court of Canada ruling on essential service aligned with that of the ILO but the BC Liberal government made no move to amend the *Code* in accordance with the *Charter*.

WE recommend that education be removed as an essential service, and that the committee recommend a tightly restricted use of essential services designations outside of the health care sector.

CONCLUSION

Other groups may ask to keep the status quo, believing labour relations stability has been achieved. They want the status quo because it is working for them at the cost of their workers. What has this so-called stability looked like? BC unions have taken employers all the way to the Supreme Court of Canada – and won. But how many other workers and unions wanted to fight but couldn't afford the time, energy, and money? The Courts and International Labour Organization have shown there was not real stability but, in many cases, the suppression of workers – their voices, rights, pay, working conditions. When the Labour Code is not balanced it becomes a tool of suppression of one of the groups you oversee.

We are hopeful the committee will recommend to government a set of Labour Relations Code and other legislative changes to bring that balance – a level playing field – in order to fully protect the Charter rights of working people to choose to join a union, bargain collectively AND keep their collective agreement until THEY choose to give it up, and strike if necessary. The welfare of workers in the Okanagan, many of them our most vulnerable, depend on those changes.

Thank you for your time.