Section 3 Labour Relations Code Review

General

Thank you for this opportunity.

My focus will be on the period since the last amendments to the *Code*. I note however, certain previous policy and decisions have had negative impacts. My central concern is that many workers are systemically denied access to collective bargaining and that even if access is achieved their ability to retain a bargaining relationship has been affected negatively.

I am also concerned that the Mullin Board displayed inconsistencies in how the *Code* was interpreted and failed to address the very real and substantive issue of what constitutes a "union".

You ask for commentary on "our modern economic realities". I submit that what we see in economic relations is the consequence of a natural and long-term trajectory. As capital has consolidated, the true owners have adopted old thinking to fragment work processes and to push down costs and responsibilities to smaller units – from franchises and even to individual workers. A century ago, this was characterised by the reliance on piece work in the application of Taylorism. There has also been a constant to push to replace labour with capital through technology. For this reason, the fundamental basis of our labour relations scheme, an enterprise-based model, is no longer adequate. Employment growth has been concentrated in work that is precarious and often part-time and at low wages. The labour process is organised in ways that suppress collectivity.

The greater the division between actual owner and the employer as traditionally defined, the less stable labour relations will be. A sectoral approach that ties both the employer of record and the actual owner to the certification responsibilities under the Code is overdue.

Acquisition and Retention of Bargaining Rights

Empirically, we know that Union density has decreased in the Province. In my experience, this has nothing to do with workers' choice, but is related to changes to business models and the weakness inherent is a strictly "enterprise based" labour relations scheme. Another significant factor is the narrow and mechanistic approach the Board has taken to successorship and contracting out. This has been exacerbated by political decisions that stripped certain rights from healthcare employees.

As an example, the growth of franchising particularly amongst very large corporate entities in fast foods, has left workers without access to any reasonable form of collective bargaining. The Code recognises the individual franchisor as the "employer" even though many, if not most, aspects of the service delivery are controlled centrally. This includes (as we know from recent developments at Tim Hortons) everything from supplies to pricing to advertising. This is a business model built entirely on keeping wages as low as possible and minimising benefits.

The implication is easily seen by those who follow the Board and its decisions. Efforts have been made to organise corporations such as McDonalds and Starbucks. These have been met with substantial resistance by franchisees with the full backing of the overarching corporate entity. Even when successful, bargaining is fragmented and the real authority is not at the table.

BC has had experience with a form of sectoral bargaining. It has occurred in sectors from construction, to pulp and paper, to forestry to healthcare and community services and others. Negotiation of master agreements have proven successful in providing labour relations stability. Within the structures, separate tables have allowed individual bargaining units or subsectors to negotiate issues specific to their own.

One of the difficulties has been the maintenance of the structures on the employer side. While the *Code* has a specific provision that may be invoked to create a mandatory structure with a council of Unions, the same is not true on the employer side. A second problem is that the *Code* itself envisions an "enterprise based" labour relations system. As we know from *Northwood* this presumption can be invoked to undermine joint bargaining. Further, the plethora of small potential bargaining units of low wage employees in sectors such as food services and building maintenance ensures that even if workers choose collective bargaining they have little leverage. The power relationship is quite unequal. As mentioned above, this is particularly true in franchises where the actual overall owner has no legal obligations.

My only suggestions in this regard are that the Panel consider a new *Code* Section that mirrors Section 41 but applies to employers. Secondly, the Committee should consider recommending a full study of the concept of a sectoral bargaining alternative to be included in the *Code*. In my opinion it is far too large an issue and change to be carried out in any overall review. Perhaps this could include a better way of registering a certification – with the employer and concurrently as an addition to a sectoral certification listing both the employer and the true owner when applicable. Finally, if a sector has unique characteristics inadequately addressed by the scheme of the *Code*, it should be recognised through specific language. As an example, the construction section deleted in the early 2000s should be re-introduced.

This problem of access by workers to reasonable and legitimate collective bargaining arises outside of the certification process as well. This is because Section 35 does not operate as originally intended and practiced. The old meaning of "contracting out" has changed.

The purpose of Section 35 was to operate as a shield, not a sword. As we have seen, the interests of workers in certain circumstances have not been afforded that shield. On the other hand, efforts have been made to use the Section as a sword. We saw this in the PCL in a proceeding. In that circumstance, PCL used the Section as a sword to sever the collective agreements held by Building Trades Unions and replace them with a relationship with CLAC. PCL is a very large Canadian owned construction firm that double breasted. The double breast sought to impose the CLAC agreement based upon its purchase of two minor contractors; one chiefly industrial, the other residential. PCL's core business was and is institutional/commercial. We know from subsequent projects that focus has never changed.

There is also the devastating effect of the *Pogson* decision issued in the 1990s. This decision was narrow and mechanistic, particularly with respect to the meaning of the word 'transfer'. For that reason, I submit *Pogson* was wrongly decided. A statute must be given a broad and liberal interpretation and, in labour relations, must look beyond form to the real substance of an issue. The idea that an entire operation can be contracted out and that subsequent contracts are no longer subject to certifications or agreements has proven a recipe for disaster. In a case such as a group home, nothing of substance has changed from the place, to the clients or the work. All that has changed is who is directs the work. Not surprisingly, this approach has created chaos in many sectors, from highways to building maintenance to long term care and, of course, community social services. Contract "flipping" has become a business strategy.

A few days after I wrote this section of the paper, I read a news article that 50 care aides on the lower mainland had been displaced. I was also told that bus drivers in Terrace were likewise being forced to reapply for their own jobs for less remuneration because the owner had engaged a new contractor. This problem is widespread and spreading.

Pogson takes one line of thinking to an extreme. Go back to the context developed by decisions such as *Lyric Theatre* as to what constitutes a "business" for the purpose of Section 35. Conceptually *Lyric* is fine to the extent of it reasons. Various factors must be considered and weighed on the evidence in each individual case. The factors are not a checklist. The point of failure is that *Lyric* (and the generally accepted assumptions) gives life to matters associated with money, investment and marketing.

The primary and most integral part of any “business” is the workers who actually deliver the product or service. Labour is not simply another “input”, people are central. When the argument is made that certifications apply to workers and not the work; the person is quite simply being disingenuous. The fact is without the workers there is no work and without the work there is no business.

People define themselves often by the work they do. Businesses regularly talk up “team work” in order to improve efficiency and morale. Corporations such as Walmart have gone so for as to force workers to engage in the “Walmart cheer” at the start of the work day. The message that is being sent is the same – ‘you are important and we are in this together’ – until of course there is a legal proceeding on a successorship that relegates the same workers to replaceable chattel.

Successorship and common employer have always been understood as defensive mechanisms -- a shield and not a sword. Despite this the shield has been swept away.

At one time, the traditional division of the concepts of successorship and contracting out had less impact. If contracting was for new or ancillary services to an enterprise, it did not affect the existing work and workers. If the contracting was of work internal and integral to the enterprise, many if not most Unions were able to preserve worker rights through collective agreement language. *Pogson* altered this by applying an old analysis to developments that were different – a circumstance where the original employer contracted the entirety or a substantial portion of the work. Once the certification and agreement were transferred the owner bore no further legal responsibility to the workers. Thus, if the contractor changed, the work was seen to be returned to the owner now unencumbered by any responsibilities that could be enforced with a new contractor. I note that in healthcare, the Liberal government took the matter one step further, even stripping rights from the workers in the first instance. I was painfully aware of the effect on Highways which undergo new bidding from time to time. In that sector, the “no longer an employer” the Province exercised its power to demand substantial and deleterious changes to the collective agreements in return for including successor rights in the bid documents.

In my opinion, the need for a cure to the tsunami of instability and disrupted labour relations requires two specific actions. The first is returning rights to healthcare workers enjoyed by all other Union employees in successor situations. The second is a specific amendment to Section 35 that recognises that the artificial division between workers and the work they perform is disingenuous. On the second point, Section 35 should include an acknowledgement that the factors set out in *Lyric Theatre* are only one half of those to be considered. An amendment is needed to provide equal footing in such

considerations between financing and marketing and the interests of the workers. In that regard, very specific language should be included that if a definable group of workers can be shown to be negatively affected through any disposition of a business, including the contracting of work, then it should be a significant factor. Further, if the work as a whole or in substantial part is contracted (including the work of a definable classification of employees) then Section 35 applies. If work that has been contracted in the past and is subject to a collective agreement, the language should establish that any certification or collective agreement continues to apply to any new contractor. Quite simply, the certification and agreement should not be seen to disappear with a displaced contractor but at least notionally be applied to the actual owner and subsequently to the new contractor.

I have no doubt that some within the Employer community will argue this harms competitiveness. The first point that they should understand is that problem is one of their own making. But for some employers taking full advantage of gaps in the law, the matter may never have arisen. This begins with the Province itself. What has become evident as an example in highway maintenance is that the Province refuses to take any responsibility with regards to labour relations but has been very willing to use its "ownership" to blackmail workers into weakening or eliminating contract clauses to simply maintain their bargaining relationships.

The *Code* attempts to balance two principles – access and stability. Stability has generally been understood to be of benefit to an employer. It is time for the Board to think beyond balance in this way and understand that the principle of stability is of great importance for workers. This is true of employees whose lives are upset simply because there is a change in who signs their paycheques.

At the Point of Certification

To appreciate the dynamics when workers are choosing to organise, it is necessary to appreciate the interaction of all the sections of the *Code* regulating the process. The first question is what is the intent? The principles of the *Code* (now for some unknown reason called "Duties"), provide some direction. The purpose of the *Code* is in part to encourage collective bargaining.

One weakness of the legislative and adjudication process is that very few directly engaged have any real and personal experience in organising. At the risk of

oversimplification, a group of employees considering unionisation include three groups. The first are those who wish to sign cards. The second are those who do not. The third and often largest is a group of workers are those who are interested but uncommitted. Union organisers provide information and encouragement, but the real debate and discussion is amongst the employees themselves.

The choice to sign a card for the third group is most often not taken lightly. People consider both the benefits and the possible downsides of collective bargaining. It is a positive undertaking. What gets little weight or appreciation in understanding the process is the often seen fear which impedes value free decision-making. That fear often centres on concerns about how an employer will react.

Under the first *Code*, employers were free to inject themselves into the debate but were warned against doing so in a manner that interfered with free choice. This was codified under Section 8 in 1993 that specifically allowed employer participation but restricted the nature of that participation. The Board in its policy decision on the meaning of Section 8 specifically considered how this interacted with freedom of expression under the *Charter* and found any limits to be justified.

Prior to the 2002, the express language in the *Code* and Board policy endorsed and encouraged a certification system that allowed working people to make decisions for themselves without undue interference. This changed with the *Code* amendments and the new policy direction by the Mullin Board in the *Convergys* decision. The "fear factor" had been held partially in check as the procedure was administrative in nature through what we now call a "card check" system. The 2002 amendments altered the very nature of the system and fully introduced one that can be described as "American style". They introduced a process of unionisation as an "election". As in the States, workers became simply voters forced to choose between a union and an employer. In that way, the very concept of free choice was undermined and replaced with a "contest".

To appreciate how significantly the amendments and subsequent policy damaged choice and labour relations per se, one must consider the interactions of several Code sections, in particular Sections 6, 7, 8 and 9.

In advance of addressing the issue, please allow me to point out how certain decisions have signalled a general weakening of the concept of unfair labour practices. I believe these also are indicative of another issue I raised earlier – the inconsistency in approach under the Mullin Board. When I was in adjudication, it was always stressed to me that decision-making begins with the Statute and the first exercise should be to read and reflect on the specific language in the *Code* that was at issue. In certain decisions such as the policy decision on the amended Section 8, *Convergys Customer Management Canada Inc*., BCLRB No. B62/2003 (upheld on reconsideration, BCLRB

No. B111/2003), the Original Panel did exactly this. While one might quibble with the decision from a labour relations perspective, it was such that the Union chose not to seek reconsideration.

The Board has in the past appreciated that how its work is perceived is critical to its success. We have seen campaigns, often manufactured, that arose from single decisions or circumstances. I submit that the Mullin Board developed a declining reputation as a result of a series of decisions and missteps. As examples, Panels read down or out statutory language. This was true of the word "select" in Section 6 in a long-term care case in the Kootenays and Section 6(3)(c) in Burnaby Casino case. There was also the curious decision to reappoint a Vice Chair who had fumbled a human rights issue (amongst others) and had been found to have displayed actual bias by the courts. The watershed, for me at least, was the reconsideration decision in a *Walmart* case, particularly the additional reasons penned by the Chair himself. Perception cannot be cured by changes to language and I trust the current Board is alive to the issue.

The amended language in Section 8 has done extreme harm in applying checks against many truly unfair labour practices. It specifically removes virtually any Employer statement from even consideration under Section 6(1) whether the assertion is true or false. The change was intended to weaken the Code and has encouraged certain egregious conduct.

In my opinion, the reintroduction of an unnecessary confirmation vote and changes to Section 8 were not coincidental. Combined with the prohibition on workplace activity in Section 7 by unions and high tests applied on Section 9, the design of the Code now is to discourage workers from choosing collective bargaining.

I have referenced Sections 7 and 9, not because of any disagreement with either the language, intent or application, but rather because of how the prohibitions have stifled one side in a discussion. Section 7 properly prohibits union organising during work but has been understood as not to limit worker debate and discussion during breaks and non-working times. As noted, the definition of "intimidation and coercion" has a high and reasonable standard.

With respect to Section 7, there is no bar against employers using their position in any and every workplace from advancing their interests during work. This has become common practice.

As for "intimidation and coercion", there has been many cases of employers claiming that any contact or approach by a union organiser fits the definition. Regularly,

employers have also cautioned that organisers were breaching “privacy” rights simply by seeking conversation. At the same time the implied message from an employer has often been coercive and employers have taken full advantage to ensure employees hear their message. Employers have used free access to employees at their pleasure. This has played out in various ways – from permission granted anti-union employees to pass information during work hours to a common practice of attaching anti-union letters to pay cheques or stubs. No due diligence is required to contain misinformation. It is akin to allowing a debate in an auditorium where one party has the stage and the other is locked in a broom closet down a back hallway. At the end of the debate, the audience gets to vote on the winner.

The Board is not currently in position to understand, appreciate or remedy many of these issues. The central problem is with Statute. The interplay of the amended Section 8 with continuing restrictions limits the ability of unions in litigating all but some actions. The “reading down” of prohibitions of actions in certain cases has worsened the situation. The system is not only imbalanced; its design contravenes free and the duty to encourage collective bargaining.

On remedy, I would ask the Panel to look back to the original understanding of the certification process. The regime that has been in place for much of the period from the early 70s and the *Code*’s original introduction was an administrative process. It focused on allowing workers to make their own decisions. It was a very good system. This has been upset by the reintroduction of a vote requirement and Section 8 changes. As noted, taken together the impact has been simply opening the door to a system that pushed aside discussion and debate by the workers themselves and replaced it with a system modeled on “an election” between an employer and a Union as an institution. This American model distorts not only the process but also the ability of workers to make rational decisions – particularly given that Section 8 allows employers to provide misinformation.

I would suggest that the “campaign” window created by the vote provision be scrapped and the process be returned to being administrative in nature. Workers should not need to decide twice – once by signing a card and once by a ballot. It is not a question of “democracy”. All it does is prolong the process and create workplace tensions. How often is a vote “lost” if a super majority of 55% have already decided? The “democracy” argument is a red herring as it comes almost exclusively from employers, not workers. How many businesses apply democratic principles in their own workplaces?

Secondly and most importantly, Section 8 must be changed. I question whether such a section is required at all. If it is, then the former language worked reasonably well and did not open the door to some of the abuses we have seen since the amendments. A less acceptable but possible alternative is two amendments to the current language. The first is the removal of the Section 6(1) reference. The second is a very specific inclusion that bars misinformation. How can one argue against requiring due diligence?

The Board's Responsibility when Red Flags are Raised

Please allow me to begin this section with praise for two aspects of the Board's function. The first is for the excellent work of Registry. The work in receiving applications and organising the information in advance of adjudication has always been done in an incredibly efficient and expedited manner. The second group that too rarely is recognised are the SIOs. The Board has always had a strong group and I was continually impressed, both as a Vice Chair and as an advocate through to my own retirement.

At the point of adjudication, the Panel is required to ask three questions. Is the applicant a trade union? Is the unit appropriate for collective bargaining? Does the applicant have sufficient membership support for the application?

Let us consider the questions in reverse order. One of the government functions badly damaged by the initial cuts under the BC Liberals was to the support system in place through the Employment Standards Branch. There had been in place an excellent cadre of very experienced Industrial Relations Officer. In support of the *Code*, IROs performed payroll audits and determined a list of employees in a proposed unit. Many of these people left the Branch and a new system for employee lists came into force. Employers were asked to provide the names of employees on a given date.

This was rarely a problem with smaller proposed units (although issues certainly arose). The big problems arose in larger units. In my direct experience, the employer-provided list was often inaccurate. Too often the list was "padded". On several occasions these additional names were sufficient in number to leave membership support below the necessary threshold. This left a Union in a position of arguing a case without even access to the most critical information. The Board policy allowing releasing in some circumstances is hit and miss at best.

If I may offer anecdotal evidence from two specific cases – both large proposed units. In the first, the Employer had a significant number of people in the workplace that were actually employed by a temporary employment agency – a labour broker. This was a long-standing arrangement. These workers were not employees in the proposed unit. It was reported that we had failed to meet the threshold requirement prior to hearing. We discovered that these temp employees had been "converted" to employee status after the application had been made. This had been done by announcement; the affected employees had not been consulted.

We presented this information at the certification hearing and requested the list. The Panel chose not to accede to our request.

In the second case, threshold was met but we questioned several names. At the vote, our scrutineer made conversation with the Employer scrutineer. That person was quite forthcoming and confirmed that certain names on the list were former employees, some of whom had left their jobs a long time previously. One person had actually died two years before.

These are only examples and I credit the Board with its willingness to order true audits if one was requested and reasons given. It was a partial answer. The difficulty was that it still required a crystal ball to know when there might be a problem.

If proper audits of each application are not feasible, there is another approach to be considered. There is no magic to the 45% threshold for release of an employee list. In fact, 45% is a higher threshold than in some jurisdictions. If the *Code* provided for a lower threshold then "padding" and litigation would be less likely. When both Parties have access to all of the information, issues settle. The reason for non-disclosure is purportedly to stop "fishing expeditions" by unions. There is no evidence the information has been used for that purpose. On the other hand, "padding" is a widely known actual problem. If the information release required a 30 or 35% threshold, it would resolve both concerns.

The second question is with respect to the appropriateness of the unit. This is perhaps the issue that attracts the most litigation. It relies on the system functioning properly and as designed. The Board relies on the Parties, commonly the Employer, to raise any objection. The vast majority of the time this a good system kept honest and in place by the "adversarial" presumption at the hearing. What happens if applicant and employer are closely tied together?

One issue is "build up" and whether the employees in a proposed unit adequately reflect the constituency of employees the Employer is likely to employ in the foreseeable future. If the relationship between an Employer and an applicant is not sufficiently

arms-length, then the question may never be raised. This has meant that large groups of employees have been brought into a certified bargaining relationship without any say.

To be more specific, there are several instances involving the Christian Labour Association (and one predecessor) when certifications were granted although demonstrably premature. As examples, there was Kiewitt and the General Workers Union (subsequently "purchased" by CLAC); Ledcor and CLAC and Flatiron. In each of these cases, the contractors were very large established firms on the cusp of substantial projects yet the numbers in the application were very small and based upon limited work.

The Board knew or was made aware of these issues even though the Parties at the certification failed to raise the issue of "build up". The Panel can review the record of the original applications to confirm the small numbers. There is also sufficient historical information to show that Kiewit had built several large projects in BC before receiving a "two year decertification" and that the GWU cert came shortly thereafter on a tiny project. At the time that PKS was scheduled to begin another large project at Ballantyne pier. With Ledcor, the work being performed was hoarding erection before it began construction of a downtown Vancouver tower – by Ledcor.

The CLAC application for Flatiron application was the most highly questionable in my direct experience. This very large firm had a contract to install a few signs for a highway improvement contractor in the Okanagan. They were operating under the guise of a numbered company ((0692316 B.C. Ltd.). There were 3 employees (the IUOE believes there was a single worker. A review of the Board file will be determinative). The work was being undertaken on a section of highway serviced by a maintenance contractor under agreement to the BCGEU (as I recall this contractor had a supervision role with respect to the work). As a GEU rep I attended the certification hearing with other Reps from the Operating Engineers. The application was for the numbered company. A few days after the certification, the company was changed to its Flatiron identity. Within weeks, Flatiron began work on a major contract on the TransCanada highway near Kicking Horse pass.

We brought this information to the Board hearing and requested status. The joint BCGEU/IUOE application was denied and the certification ultimately awarded. The general test of "legal and material interest" as well as the Board policy under *Armscon* that critical information would be withheld had been met. The erection of highway signs is work performed by members of the BCGEU bargaining unit and the IUOE has expertise in contracting and projects in the sector. Certainly, the fact that the identity of a large firm had been hidden behind a numbered company should have raised red flags.

The problem was not the law or policy; the problem was a failure to reasonably apply them. Consequently, the blanket of legal protection offered by CLAC and that relationship was spread over both Flatiron and its partner on the Port Mann bridge meaning qualified BC tradespeople sat home as work was performed by people from both out of Province and out of country.

It is the first question asked at a certification hearing that is for me of greatest interest. The Board has always taken a practical approach in determining if the applicant is a "union". At the time of an initial certification, the issue is explored before an answer is given. This has applied to both newly formed unions and those established elsewhere. On the second point, the Public Service Alliance of Canada remade aspects of its structure to meet the definition of union in the Code. PSAC is one of, if not the largest union, in Canada. Subsequently, an applicant is deemed a "union" for the purpose of processing a certification.

This has proven problematic in the past. While Canadian Iron and Steel achieved the original designation, it was subsequently shown to be far less than a legitimate organisation. For all intents and purposes CISIWU has disappeared. It is my understanding that at some point several decades ago, the Board did a cursory examination of the Christian Labour Association but did not delve deeply into how it actually operated. This was not unusual as there was no real imperative to do so.

In more recent years, the question as to whether CLAC's Locals (the entity that on paper holds certifications) are in fact "unions" as defined by the *Code* has been given substance. The issue has been raised at the Board with some detail by the Steelworkers and the BCGEU. The submission to the Board authored by Laura Parkinson before her untimely death cogently sets out a perspective on this issue. You may also wish to review my analysis set out on three occasions in the last years before my retirement. Neither of the arguments were pursued as cases settled. In each case, the interests of the affected employees involved took priority over the institutional interest of the Union as is common with real Unions. The matters raised have never fully been adjudicated.

As a thumb nail, please allow me to fall back on my own previous work. As a foundation, my information relied on two sources – the CLAC Constitution and the disclosure of certain documents obtained pre-hearing. For the purpose of this submission, I have been able to obtain the current CLAC Constitution and note that there has been no substantive changes that affect my view. I cannot definitively say that how its Local 501 (or other Locals) operates remains the same although I'm advised by people who are currently monitoring that it has not.

A reading of the CLAC Constitution shows that its Locals have no independence in policy, finances or collective bargaining. Virtually all authority rests with the Staff Representatives and the National Office. Staff Representatives are appointed by and solely responsible to the National Office. In my opinion, the Locals are not "unions", but rather exist only on paper.

This belief is further buttressed by the review on Local 501 documents that spanned several years. What we found was no evidence of elections and a single conference-type call that may have been considered an Annual General Meeting. Generally, there was a stunning absence of membership participation of any sort. I am advised that this holds true today and with other Locals.

The Board must ask itself whether it can with confidence and authority answer "yes" to the first question asked in every certification hearing. I submit that there is sufficient reason to make a full enquiry into the issue. Whether the Board exercises its own authority under Section 142 or signals a willingness to act upon an application by legitimate unions is not important. When a Review Panel suggested the same with respect to CISIWU, the idea of a proactive approach remained stale mated as a few argued to do so offended the Board's independence. I understand an application was received but for unknown reasons never fully processed. Consequently, a significant and important certification question continues to be answered without a full appreciation as to whether the answer is correct.

In Summary

I have chosen to only address a few issues that I consider the most pressing. I make the following suggestions:

1. There is an immediate need to address the issues of successorship and contracting. Healthcare workers must be returned to full rights. There have now been years of experience with the Board's policy and approach to contracted work. We know it has been at the root of major dislocations and instability. This must be cured.
2. The Panel should look favourably on the concept of sectoral bargaining as an alternative to the strictly enterprise-based scheme of the *Code*. As this is a complex issue, it would be appropriate to recommend further work and study on its introduction. One change that should be considered independently is a new section that mirrors Section 41 but applies to employers. Another is an immediate return of the construction section to the *Code*.

3. The certification process should be altered so that it is truly based on the decision of workers themselves. This means ending the need for a vote and reintroducing the administrative card check system.
4. The current language in Section 8 should be changed. If the Section is even necessary, then it should be returned to the former language. As a less attractive alternative, Section 8 should be amended by removing the reference to Section 6(1) and adding language that specifically bars circulation of misinformation by employers or their agents.
5. The 45% threshold before an employee list is released should be lowered to 30 or 35% in order to guard against the very real problem of "padding". If possible, payroll audits by a neutral third party should be carried on every application. If this is not feasible, then an audit should be performed upon request an applicant.
6. The status of CLAC as a trade union must be addressed. There is a large volume of evidence that it does not meet the definition in the *Code*, that its Locals (in whose names certifications and agreements are held) exist primarily on paper only; that the membership exercises virtually no influence much less control; and that it has been seen to have less than an arms length relationship with several employers.

Thank you for your time and consideration,

Paul Johnston