

BC FEDERATION OF LABOUR
SUBMISSION TO

THE HONOURABLE
MINISTER OF LABOUR,
HARRY BAINS

REGARDING PROPOSED
AMENDMENTS TO THE *BC
LABOUR RELATIONS CODE*



November 30, 2018

Via Email: lbr.minister@gov.bc.ca; LRCReview@gov.bc.ca

The Honourable Harry Bains
Minister of Labour

Dear Minister Bains,

Thank you very much for providing an opportunity for us to respond to the Section 3 Review Panel's (the "Panel") report and recommendations for amendments to *BC Labour Relations Code* (the "Code").

Concrete recommendations to improve the operation of the Code are long overdue. In the fifteen years since the Code was last reviewed a lot has changed.

A trilogy of legal decisions has confirmed the rights of workers to associate, bargain in good faith and withdraw their labour. Yet, there are many groups of workers whose rights under the *Canadian Charter of Rights and Freedom* (the "Charter") are infringed upon by the current labour relations regime. The former BC Liberal government made a series of legislative changes that shifted the playing field in favour of employers and business interests. Further, the Code was not reviewed following these decisions to recognize workers' distinct Charter rights, even while aspects of Bills 27, 28 and 29 restricting union rights were struck down by the Supreme Court of Canada.

Additionally, our workplaces and the composition of our workforce have changed. Inequality is growing with the rise of insecure, precarious and low-wage work which is replacing good, family-supporting jobs. There has been a dramatic shift from traditionally well-paying industries, like manufacturing, into much lower-paying work in the service and retail sectors. These sectors have low unionization rates and are notoriously difficult to organize as they have high turnover, a large part-time workforce, and are proliferated with franchises backed by multi-national corporations.

In several sectors, employers have used contract flipping and contracting out as tactics to terminate union representation, purge union organizers, drive down wages and disrupt accrual of benefits like severance, vacation time, and sick pay. Our Code provides little protection against this.

At the same time, the growth of the digital economy has created an entirely new type of work and drastically altered the nature of the employee-employer relationship. On-line piece work has become more prevalent with companies acting as brokers between workers and a multitude of

different “employers” offering tasks in increments taking as little as five minutes. We live in an “on-demand” world that imposes increasing requirements on workers’ time and labour, but our laws have not contemplated this shift.

When workers can’t organize themselves into unions, it has a significant and negative impact on them and their families. In Ontario, the panel conducting the *Changing Workplaces Review* heard that, “low income, lack of control over scheduling, lack of benefits such as pensions and health care, personal emergency leave or sick leave, all together or in various combinations, create a great deal of uncertainty, anxiety, and stress which undermines the quality of life and the physical well-being of a wide swath of workers in our society.”

The impact of these changing workplaces has not been felt equally. Those who find themselves in precarious and low-wage work are disproportionately women, people of colour, workers with disabilities, new immigrants and young workers.

The imbalance of the current Code, its application, and lack of coverage of certain sectors result in it being increasingly difficult for workers to form unions and regain some control over both their work and personal lives.

The Code desperately needs both modernization and balance to ensure that it reflects workers’ Charter rights and protects the needs of all workers in our province.

On behalf of the Executive Officers of the BC Federation of Labour, representing the views of more than 500,000 affiliated union members across BC, we respectfully submit our thoughts on the Panel’s recommendations.

Sincerely,



W. Laird Cronk
President

Summary

The Panel's recommendations represent an important step forward. They are thoughtful and informed. They address both the mechanics of the Code and the operation of the Labour Relations Board.

We commend the panel's call for increased funding for the Labour Relations Board. The Board has been critically starved of resources and is unable to perform its full functions. This is a significant access to justice issue. Full funding is essential to the operation of the Board and must be immediately addressed.

We are pleased to see a number of recommendations that remedy the imbalance between employers and workers. In particular, recommendations to limit employer interference in unionizing drives; strengthen powers for remedial certification; restore successorship language in several public and private sector industries; and remove the essential services designation from education.

We support restrictions on the use of mail-in ballots, extending the validity of membership cards to a six-month period, the ability to hold industry panels, and changes to the expedited arbitration process. We also agree with the need for regular reviews of the Code.

There are, however, a few areas where you must strengthen the recommendations. We are incredibly disappointed that the majority recommendation does not call for a return to card check certification. We strongly support the minority opinion of Sandy Bannister. The requirement for workers to choose a union twice is an infringement on the Charter right of workers to organize. The certification process is not an electoral process. It's the demonstration of the will of workers to bargain their working conditions. The second voting period is an obstruction to this right as it inevitably becomes a campaign period for the employer. The double choice system has led to a rise in unlawful interference and a decline in successful certifications. There is no evidence to support that a membership card does not adequately reflect an employee's wishes. We strongly call for the restoration of a system of union certification on the basis of membership cards alone.

We believe there are omissions to the scope of the successorship provisions that need to be addressed. Sectors, like food services and forestry have been left out of the recommendations. Yet there are numerous cases where contract flips have had a devastating effect on workers in these sectors. To remedy this omission, we say that successorship language should be broadly applied to all workplaces in British Columbia.

The Panel has recommended a single-issue commission on sectoral, multi-employer bargaining. We support this call and urge for the immediate appointment of the commission. The commission should conduct a review and be tasked with recommending a bargaining model for implementation. The Supreme Court of Canada has upheld that workers have a charter right to form a union. Yet many workers do not have access to this right, in particular those in temporary,

part-time and/or precarious employment. Further with the changing nature of work and the growth in these virtually unorganizable sectors, failing to provide opportunities to unionize negatively impacts the quality of life for workers and their families.

We feel strongly that changes are needed in two areas where the Panel did not make recommendations.

A comprehensive review of the construction industry is needed to properly address its unique nature. Unlike most other industries, the construction industry is characterized by both mobile employers and workers. Their work locations and employment relationships shift frequently. We do not agree that that construction industry labour relations has been sufficiently and recently reviewed. The last examination focused on improvements to bargaining structure and did not examine all construction-specific provisions. Many needs have emerged that must be addressed to ensure balance in this industry.

We also do not agree with the definition of “construction” proposed in the recommendations. It unnecessarily excludes some groups of workers. We say the definition should not be implemented without a full sectoral review.

Finally, we believe you must address groups that have been recognized by the Board as trade unions, but which are dominated or influenced by employers, or fail to have sufficient democratic practices to ensure the will of their members are represented. These unions of convenience exploit their members to the employers’ benefit and do a disservice to the Charter principle of free association. The trade union status of these groups must be investigated and status revoked if employer interference and insufficient democratic practices have been found.

Unions play a critical role in making our workplaces fairer. It is essential that our Code supports good jobs and healthy workplaces by ensuring that workers who wish to form a union can do so without fear, intimidation, or barriers.

Recommendation number	Topic	Our position
1	Duties under the Code	We do not agree with this recommendation. We say Section 2(b) should be eliminated.
2	Section 3	We agree that a regular review of the Code is needed to ensure that it reflects the needs of modern workplaces.
3	Employer communications with employees	We support this recommendation. The current language of Section 8 should be struck. It extends an advantage to employers that too often infringes a worker's Charter right to associate.
4	Unfair labour practices	We support this recommendation. The consequences of unfair labour practices disproportionately impact workers seeking to form a union. Remedial certification is the appropriate remedy where an unlawful interference has occurred.
5	Access to collective bargaining	Section 24 and 25 should be struck and be replaced with card check language as supported by the minority opinion of Sandy Bannister. The requirement for workers to choose a union twice is unnecessary and restricts the Charter right of workers to organize. The certification process is not similar to the electoral process we use to elect legislative representatives. It is the demonstration of the will of workers to bargain their working conditions. The second voting period is an obstruction to this right as it inevitably becomes a campaign period for the employer. The double choice system has led to a rise in the instances of unlawful interference and a decline in certifications. There is no evidence to support that a membership card does not adequately reflect an employee's wishes. We strongly call for the restoration of a system of union certification on the basis of membership cards alone.
6	Certification votes	We say Section 24 and 25 should be struck and be replaced with card check language. Should certification votes be maintained, we agree the voting period must be significantly shortened. We say the voting period should be measured in consecutive days and not business days. Business days are a non-standard measure of time and using business days may result in no reduction of the voting period at all. For example, under the committee's current recommendation, if an application was made on a Friday before a statutory holiday, the voting period would remain ten consecutive

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		days. We recommend a voting period of two consecutive days.
7	Voting process	We support this recommendation. Mail-in ballots often result in significant extensions of the voting period. This creates an inequity between workers using in-person votes versus those participating in a mail-in ballot. Extended voting periods also result in an increase in unlawful interference. Mail-in ballots should only be used in appropriate circumstances and where there is mutual agreement.
8	Membership evidence	We support extending the validity of membership cards to a six-month period. This time frame is more consistent with other Canadian jurisdictions.
9	Employee lists	We believe this recommendation should go further. A union should be provided with the employee list once it has reached a 20% threshold of signed cards. This would ensure that the union is on a level playing field for communication with employees and that lists aren't padded or altered by manipulative employers.
10	Change in union representation	We disagree that the definition of construction should be altered absent a full review of the construction industry. Raid periods should be similarly reviewed based on the unique circumstances of the construction industry.
11	Successor unions and collective agreements	We support this recommendation.
12	Successorship	We strongly support this recommendation but believe it needs to be expanded to include <u>all</u> workplaces. Successorship rights within both the public and private sectors are needed to protect workers from contract flips and contracting-out that is designed to drive down wages and benefits, eliminate representation and purge union supporters. This practice is most common in low-wage sectors where workers are most vulnerable. Workers must be protected from exploitive contract flips and contracting out. Strong successorship language is needed to ensure their job security, entitlements and right to representation.
13	Successorship in the forestry sector	We support the partial dissenting position of Sandy Bannister. Successorship protections as stated above should be extended to the forestry sector to protect

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		workers when there is a transfer or take-back of forest tenure or licenses.
14	Statutory freeze of terms and conditions after certification	We agree that the freeze period should be extended. However, we believe a 12-month period is arbitrary, and therefore the freeze should be in effect until a new agreement is bargained. Similarly, the freeze should apply where work is contracted out, a contract is flipped to a new employer, or a business is sold. Removing the time limit would incentivize employers to bargain in good faith to reach an agreement. Currently employers are rewarded by delaying progress at the bargaining table.
15	Filing collective agreements with the Board	We support this recommendation.
16	Joint consultation	We agree with this recommendation. Requiring mutual agreement again unnecessarily prolongs disputes. Moving ahead with this recommendation will assist parties in resolving disputes more expeditiously and with reduced costs. There is also an urgent need for the Board to expand its mentorship and training for new staff who will take on this role to ensure its effective application.
17	Adjustment plans	We support this recommendation for a more robust Section 54 process.
18	First collective agreements	We support these recommendations as they bring our Code more in line with Ontario and Alberta.
19	Sectoral collective bargaining	We believe that sectoral, multi-employer bargaining is a necessary step forward to address the growing precarious workforce in our province. We urge you to immediately establish a commission to recommend and establish a model for sectoral multi-employer bargaining. Under the current model, too many workers are unable to access their Charter right to form a union.
20	Secondary picketing and replacement workers	We support this recommendation.
21	Essential services – education	We support the recommendation to remove educational services from essential services. This is consistent with international law which defines essential services as those services that protect the life, health, and safety of citizens. The inclusion of educational

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		services in the current legislation represents an unjustifiable interference in the fundamental right of workers to withdraw services. Education was not historically included in essential services legislation prior to 2001.
22	Industry advisory councils	We support this recommendation to provide the minister of labour more power to form industry advisory councils.
23	Arbitration procedures	We agree with tightening the timelines for arbitration procedures. Workers need expeditious resolution to workplace issues.
24	Expedited arbitration	We support this recommendation. We welcome efforts to improve the expedited arbitration process so that it provides, as it was originally intended to do, timely resolution to disputes. Imposing hard deadlines is necessary to avoid delays that are all too common. The recommendations to streamline case management are also necessary to reduce the time and cost of arbitration. This will ensure that more unions will have access to the arbitration process.
25	Review of arbitration awards	We support this recommendation.
26	Standard for review of Board decisions	We support this recommendation as it will bring the law in BC in line with other Canadian jurisdictions.
27	Labour Relations Board – poster	We support these recommendations. Workers should have access to fair and neutral information about unions.
28	Fines	We support this recommendation.
29	Resources for the Labour Relations Board	We strongly support this recommendation. After 16 years of chronic underfunding, there has been an erosion of the services provided by the Board. This raises a significant access to justice issue for workers who rely on the Board to adjudicate matters critical to their livelihood. A fair and balanced Board requires sufficient funding. Adequate resources must be made available so that improvements to the Code can be implemented.
	Construction review	The panel chose not to recommend a stand-alone review of the construction industry. We strongly believe a review is needed. A comprehensive review is

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		necessary and required immediately to properly address the industry's unique nature.
	Employer influenced organizations	The Code requires trade unions to be free from employer domination and influence and to have democratic governance practices. We say there are trade unions recognized by the Board that violate this definition and this should be remedied.
	Women and members of equity seeking groups	Consideration should be given to the content, structure and implementation of the Code to identify systemic barriers that impair the ability of women and members of equity-seeking groups to take on leadership roles in its administration. This has been a problem at both the Labour Relations Board and continues to be a problem in the current roster of arbitrators in BC. For example, the roster of arbitrators does not include a single person of colour. Implementing recommendations like those to improve and expand the use of expedited arbitration may provide desperately-needed entry points for women and members of equity-seeking groups. It is incumbent on the Ministry and the Board to find ways to provide opportunity, mentorship, experience, and training so that the administration of labour relations in BC reflects the composition of our province.