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VIA EMAIL: [LRCReview@gov.bc.ca](mailto:LRCReview@gov.bc.ca)

Ministry of Labour  
PO Box 9206 Stn Prov Govt  
Victoria, BC V8W 9T5

**SUBMISSION TO THE BC MINISTRY OF LABOUR IN RESPONSE TO LABOUR RELATIONS CODE REVIEW  
COMMITTEE RECOMMENDATIONS FOR AMENDMENTS TO THE LABOUR RELATIONS CODE**

The BC Road Builders and Heavy Construction Association (BCRB&HCA) appreciates the opportunity to provide our comments on the Labour Relations Code Review Panel's [Recommendations for Amendments to the Labour Relations Code](#).

BCRB&HCA is a non-profit organization established in 1966 to provide a unified voice for the industry. BCRB&HCA represents over 250 members providing road building, rehabilitation, heavy construction, highway maintenance and the supply of related goods and services throughout British Columbia. BCRB&HCA is the recognized advocate for the development and maintenance of core infrastructure and a balanced, safe transportation system that promotes economic growth and a sustainable environment.

Our member companies' most valuable asset is its people and they are committed to supporting the growth and development of their qualified workforce, now and into the future. Safety and training are paramount for our members, and are enabled by the culture of teamwork and mentorship that is present at all of our worksites.

BCRB&HCA member companies are inclusive of all labour affiliations – trade union, alternate union or non-union. Many of our members have collective agreements with a variety of trade unions, including the BCGEU. And many other members' employees are not represented by any trade union.

BCRB&HCA was pleased to contribute to the engagement process that informed the Panel's recommendations. We have consistently expressed our position that any recommendations to amend the Labour Relations Code (Code) must both better support a growing, sustainable economy and promote stable and harmonious labour relations in the province. As its foundational principle, the Code must retain its equal balance between the interests of unions, employers and employees. Neither ideological nor partisan influences should inform changes to the Code, which would disrupt the current labour relations stability that British Columbia has enjoyed for decades. As the Panel noted, the mere potential for such disruption creates immediate adverse impact to certainty, predictability and the confidence of investors in British Columbia that are crucial to sustaining and growing our economy.

BCRB&HCA is encouraged by certain recommendations submitted by the Labour Relations Code Review Panel (Panel), most notably Recommendation No. 5 that preserves the secret ballot which is foundational to ensuring an employee's free and unimpeded right to choose. Recommendation No.19 to withhold from making changes to Sectoral Bargaining pending further review provides a short-term measure of relief from this contentious issue; however, it raises the potential for future instability. Recommendation No. 20 to fundamentally maintain the Secondary Picketing provisions within the Code reflects the Panel's efforts to maintain fairness within the Code.



BCRB&HCA is concerned that, in the aggregate, the proposed changes to the Code mark a shift in balance toward the interests of unions and constrict the rights of employers. If not properly considered, we believe that the Panel's recommendations will have undesired consequences on the perception of British Columbia's labour and economic stability which will ultimately affect investor confidence.

BCRB&HCA offers the following comments for consideration by the Ministry of Labour in their evaluation of the Panel's recommendations.

### **Panel Recommendation No. 3 – Employer Communication with Employees**

BCRB&HCA notes with concern the Panel's recommendation to revert the Code to its pre-2002 form in relation to Employer Communication with Employees. In specific, we note the Panel's commentary on the importance of informed employee choice, as well as the belief that employee and employer interests are inherently not aligned. BCRB&HCA believes that employee choice is not mutually exclusive from employer interests in all cases.

BCRB&HCA recognizes the constitutionally protected freedom of an employee to associate, as well as the freedom not to associate; and further, the right to make their individual choice without coercion or intimidation by anyone. We further note the Freedom of Speech provisions of the Charter, and the right to hear or receive these views. As such, BCRB&HCA does not see the need to constrict employer rights under the Code to the provision of 'objective neutral information that best assists the exercise of employee choice' and to rely on the Labour Relations Board (Board) website and posters for the provision of information about unionization in an employer's workplace.

#### **BCRBHCA Recommendation 1:**

BCRBHCA encourages the Ministry of Labour to retain the provisions of Section 6.8 and 9 of the Code that relate to Employer Communication with Employees, and avoid the reversion to pre-2002 concepts. In addition to protecting employee rights, this Section affirms the recognized and well-articulated rights of an employer to express their opinions and facts about unionization in their workplace, provided that it is done without coercion and intimidation.

#### **BCRBHCA Recommendation 2:**

BCRBHCA recognizes the importance of providing transparent, easy-to-access and balanced information to employees regarding their freedom to associate, and *not* to associate. BCRB&HCA recommends that in relation to Panel Recommendation No. 27, that the Board provide clear information to employees on both of these rights, and not simply their right to unionize.

### **Panel Recommendation No. 4 – Remedies**

BCRB&HCA respects the Board's jurisdiction to allow remedial certification under the Code if the Board is of the opinion that employees would have sought certification were it not for the unfair actions of the employer. However, the Panel has recommended expanding this jurisdiction to allow for the certification of employees if the Board determines that it is a suitable remedy for an employer's unfair labour practices. The report notes that this recommendation is introduced by the Panel as both a deterrent and remedy for unfair labour practices.



### **BCRBHCA Recommendation 3:**

The need to introduce remedial certification as a deterrent is unnecessary given the existing authority of the Board to allow for remedial certification where there is evidence it is the will of employees. As proposed, the Code could grant authority for certification even if it is not the will of the employees. This recommendation could inadvertently upset the balance of interests covered under the current Code in favor of unions. Therefore, BCRBHCA recommends that the existing provisions of the Code relating to remedial certification be retained.

### **Panel Recommendation No. 6 – Certification Votes**

While BCRB&HCA is encouraged by the non-consensus recommendation to retain the secret ballot, we maintain our stated position regarding the need for sufficient time for employees to become fully informed on the merits or disadvantages of trade union representation ([letter](#) dated March 19, 2018). The Panel's recommendation to shorten the time for a vote following a Union's application for certification (or an application by employees to decertify) from 10 days to 5 business days is counter to the objective of informed employee decision-making.

### **BCRBHCA Recommendation 4:**

BCRBHCA recommends that the existing provisions of the Code relating to time frames for certification votes be retained. For employees who do not work on weekends, the current 10-day timeframe provides them with 6 days to fully evaluate the merits of union certification, making the proposed change unjustifiable for these employees, while also denying others the benefit of a modest amount of additional time to make a well-informed decision.

The existing timeframe also allows an employer to provide suitable information to employees to support them in making a fully-informed decision. Maintaining the existing provisions of the Code retains the necessary balance of interests across employees, unions and employers while maintaining focus on the employees right to choose.

### **Panel Recommendation No. 8 – Membership Evidence**

BCRB&HCA notes the recommendation by the Panel to amend Regulation 3 to double the period for evidence of membership from 90 days to 6 months to gain support for an application for certification. The Panel cites alignment with two other provincial jurisdictions in Canada as the basis for their recommendation. BCRB&HCA gathers from the Panel's report that several other jurisdictions currently seek evidence of membership validity for 90 days.

In order to avoid an unfair practice complaint, BCRB&HCA understands that employers must conduct themselves as if a certification campaign was ongoing for at least 6 months after the last known union activity. Therefore, this extension in card validity places a disproportionate burden on the employer, relative to other jurisdictions in Canada.

### **BCRBHCA Recommendation 5:**

In order to retain the balance of fairness under the Code across all interests, and to avoid disruptive activities within the workplace that are characteristic of raids and union drives, BCRB&HCA recommends that the existing Regulation allowing for 90-day evidence of



membership be kept in force, which the Panel notes is in alignment with Saskatchewan and the maritime provinces.

## Panel Recommendation No. 10A (2) – Change in Union Representation (Raids) - Construction

BCRB&HCA appreciates the Panel's efforts to introduce a more balanced approach and predictability for employees, unions and employers by seeking to manage the frequency of open periods under the Code. BCRB&HCA agrees that these open periods can be disruptive to employees, unions and employers, and do not cultivate a productive relationship between these parties. BCRB&HCA further acknowledges the Panel's consideration of the construction sector's seasonal nature in its recommendations. However, the BCRB&HCA proposes that open periods scheduled during the height of construction could create unrest at peak times, and undermine critical project timelines and deliverables – particularly in the case of publicly-funded infrastructure projects. Further, this may not achieve the desired outcome if it also coincides with the expiry date of existing collective agreements, or the collective bargaining process itself.

### BCRBHCA Recommendation 6:

In order to achieve the objectives of predictability and minimizing the divisive and troublesome effects of raids, BCRB&HCA proposes that the recommended changes to Section 19(2) be adjusted to read:

- (a) *If a collective agreement is in force for a term of 3 years or less, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit in **October and November**, or the seventh and eighth months of the last year of the collective agreement.*

## Panel Recommendation No. 11 – Successor Unions and Collective Agreements

BCRB&HCA is concerned with the Panel's recommendation that the Board, at its discretion, can accept an application by a union to open a collective agreement it has inherited following a raid, provided that there are two or more years remaining in the term of the agreement. This has far-reaching implications for employers that have negotiated long term collective agreements as a means to provide certainty and stability when bidding on lengthy capital investment projects. While this recommendation will cultivate employer uncertainty, it is a particularly acute concern given this Government's commitment to the use of Community Benefit Agreements for two major publicly-funded infrastructure projects.

### BCRBHCA Recommendation 7:

BCRB&HCA encourages the Ministry to consider rejecting this discretionary provision. At a minimum, its use should be prohibited on major construction projects due to the unfair burden it places upon employers who have entered into long term agreements for the purposes of publicly-funded infrastructure projects. An unintended consequence of this requirement would be to discourage highly qualified employers from bidding on major infrastructure and construction projects, to the detriment of British Columbians.



## Panel Recommendation No. 14 – Statutory Freeze of Terms and Conditions After Certification

BCRB&HCA understands the importance of fostering productive dialogue and relationships between unions and employers, in particular when negotiating the first collective agreement following certification. The presence of a limited timeframe within which to bargain a collective agreement can hinder productive communications in the early stages following certification. As such, BCRB&HCA respects the Panel's objective of extending the Statutory Freeze provisions under Section 45 of the Code. The Panel's recommendation is to triple this time period from its current 4 months to 12 months. The Panel notes in its rationale that the average timeframe to negotiate a first collective agreement was previously assessed at 8 months.

A consequence of this extended timeline is the increased burden placed upon an employer to maintain their 'business as usual' during the freeze period, and withhold from making changes to employment conditions during this timeframe. Extending the freeze period for 12 months triples the employer's exposure to economic and labour market volatility, without the ability to manage these major cost and operational risks.

### BCRBHCA Recommendation 8:

In support of the objective of allowing a reasonable timeframe within which to establish a productive relationship and bargain a first collective agreement, BCRB&HCA encourages the Ministry to consider an extension to **8 months**, instead of the recommended 12-month period. This expanded timeframe will allow for the relationship between the union and employer to develop, while incenting the efficient bargaining of an initial collective agreement. This adjusted timeframe will also reduce the burden on the employer to maintain their 'business as usual' during the freeze period. This timeframe can be re-evaluated based on evidence during the proposed 5-year Code review process.

## Panel Recommendation No. 24 – Expedited Arbitration

BCRB&HCA respects the Panel's consideration of different perspectives to improve the effectiveness and utility of Expedited Arbitration under Section 104 of the Code. BCRB&HCA further appreciates the Panel's acknowledgement of our stated position that Section 104 should not apply to disputes over significant policy issues nor contract interpretation cases. Further, BCRB&HCA maintains that decisions under this Section should be non-precedential in order to support its usage, and benefit labour relations in BC.

### BCRBHCA Recommendation 9:

BCRB&HCA supports the Panel's objective of enabling an expedited process with specific deliverables to be completed within more reasonable timeframes; we are cautiously optimistic that these provisions will enhance the usage of this Section. We encourage the Ministry to reconsider the application of this Section to exclude significant disputes over policy and contract interpretation matters, and that the decisions be non-precedential. At a minimum, we recommend that Section 104 be dutifully evaluated as part of the 5-year review provision recommended by the Panel.



### Panel Recommendation No. 28 – Fines

BCRB&HCA appreciates the Panel's recommendation to limit the Board's authority under the Code to address compensatory and restorative remedies only, and to maintain the exclusion of punitive penalties under the Code.

BCRB&HCA notes the Panel's recommendation to increase the remedial penalties available under the Board's authority for failure to comply with Board orders. The proposed increase represents a five-fold increase over the current fee schedule, and while it is in alignment with certain jurisdictions, it is in excess of others such as Saskatchewan and Quebec.

#### **BCRBHCA Recommendation 10:**

BCRB&HCA supports the Panel's objective of encouraging compliance under the Code with more burdensome penalties. We further acknowledge reference to maximum amounts, such as 'up to \$50,000 for companies' as a marker for the uppermost threshold, and the assumption that the Board maintains discretion to establish fines below that maximum threshold. BCRB&HCA notes that other jurisdictions provide reduced thresholds for first time individual or corporate offenses. To demonstrate the Code's balanced treatment of all interests, consideration for first time offenses, and in recognition of the significant increase in fines available under the Code, the Ministry may consider establishing a tiered approach to fines for first time offenders under the Code.

The BCRB&HCA appreciates the opportunity to provide our comments and suggestions to support the Ministry of Labour in its evaluation and consideration of the Panel's recommendations to improve the Code. Our diverse membership includes all labour affiliations – trade union, alternate union and non-union, and uniquely positions us to recommend balanced and fair outcomes to the Code that serve the interests of employees, unions and employers.

Our recommendations are offered with the goal of ensuring workplaces support a growing, sustainable economy with fair laws for workers and business.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kelly Scott'.

Kelly Scott  
President  
BC Road Builders and Heavy Construction Association