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BC Labour Relations Code Review Panel
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November 30, 2018

Re: Response to the 'Recommendations for Amendments to the Labour Relations Code' Report

Dear BC Labour Relations Code Review Panel,

Thank you for the opportunity to submit written comments on your recent report titled 'Recommendations for Amendments to the Labour Relations Code'.

As I mentioned in my oral presentation to your panel on April 12, 2018, the CCPA-BC has a long track record of producing research and policy recommendations on the importance of strong workplace rights, in particular for vulnerable workers. Our research shows that the status quo is failing many vulnerable workers and that stronger workplace rights and protections – both under the Labour Relations Code and Employment Standards – can be a key policy lever to reduce income inequality, improve quality of life for working families and reduce poverty among workers, in particular among low-wage immigrant and migrant workers, and women.

To address the particular needs of vulnerable workers and provide them with meaningful access to unionization and collective bargaining, if they so choose, we made four recommendations for reform of the BC Labour Relations Code:¹

1. Increase funding for the Labour Relations Board to ensure it can adequately administer and enforce the law.
2. Increase fines and penalties for employers who break the law.
3. Remove barriers to collective bargaining introduced in 2001 and protect workers' right to bargain collectively and to strike, especially in precarious sectors by re- instituting card-check union certification and enabling sectoral bargaining.

¹ The full text of the presentation is available on the CCPA-BC website.

<https://www.policyalternatives.ca/publications/reports/ccpa-bc-presentation-bc-labour-relations-code-review-panel>

4. Introduce successorship rights in the case of contracting out or contract re-tendering for sectors employing vulnerable workers to prevent contract flipping from suppressing wages and eroding working conditions.

Your panel's report included recommendations that largely aligned with our recommendations 1, 2 and 4, but did not adequately address the issues flagged in our recommendation 3.

The panel made a welcome recommendation for increased funding for the Labour Relations Board to ensure it can adequately fulfil its duties to administer and enforce the Code (Recommendation No. 29). It is my hope the BC government will immediately adopt this recommendation and provide the required resources in Budget 2019.

Further, the panel's recommendation for higher fines for individuals and organizations who break the law (Recommendation No. 28) is very similar to what we recommended. Notably, however, no rationale was provided for the new maximum fines recommended, which match the maximum fines in Ontario and Alberta for individuals (\$5,000), but not for employers and unions (where the panel recommended fines of up to \$50,000, half the size of the \$100,000 maximums in Ontario and Alberta).

Your Recommendation No. 2 – to have a committee of special advisors appointed to periodically review the Labour Relations Code – is a welcome idea given the rapidly changing world of work, and should be implemented.

Your panel's Recommendation No. 12 to extend successorship protections to some unionized workers whose work is contracted out represents a step in the right direction. It was encouraging to see the provincial government's immediate action to partially implement this recommendation by repealing the Health and Social Services Delivery Improvement Act (Bill 29) and the Health Sector partnership Agreement Act (Bill 94).

However, the list of specific services for which successorship protections are recommended in the case of contracting out or contract re-tendering, specifically those working in building cleaning, security, bus transportation or the broader health sector (including food, housekeeping and long-term care), is overly narrow.

As your own report observes, "[w]hen contracts are re-tendered, often the same workforce continues to provide the same services to the same customers or clients, with the same working conditions, at the same location, using the same equipment" (p. 19) and "[t]he contract re-tendering issue is most pronounced in sectors with the greatest precarity" (p. 20). There is no evidence that this practice is limited to the sectors specified in Recommendation No. 12.

Your report concludes that "it is no more socially desirable to allow cost savings through reduced labour costs and eliminating established collective bargaining rights by re-tendering of contracts than it is in the sale or transfer of a business. Both require the protection of successorship protections of the Code." (p. 20). This constitutes a compelling argument for extending successorship rights in all cases

of subcontracting or contract re-tendering in all industries, to mirror the successorship rights existing in the case of the sale or transfer of a business.

While the workers in the health sector and other low-wage sectors have experienced some of the most egregious cases of loss of bargaining rights, and the worst erosion of earnings, benefits and job security as a result of subcontracting, there is no compelling justification for allowing contracting out to be used as a loophole to undermine collective bargaining rights in any sector. The only rationale your report provides for its narrow recommendation – employer organizations' opposition – does not hold up to your own observation that similar opposition existed when successorship rights were introduced for the sale of businesses, yet no “discernable negative implications” materialized (p. 20).

Therefore, I urge you to broaden Recommendation No. 12 to extend successorship rights in the case of contracting out or contract re-tendering to apply to all sectors.

Last but not least, your panel's (majority) recommendations did not sufficiently address the existing barriers to access collective bargaining and unionization for many workers in precarious employment arrangements – those in short-term, casual or part-time contracts characterized by low-wages and job insecurity. Re-instituting card-check certification and enabling more sectoral multi-employer bargaining are essential for extending meaningful access to unionization for precarious workers in the province.

As noted in your panel's report, BC is in the minority of Canadian jurisdictions that require a secret-ballot vote for union certification. It is not clear that – without a return to card-check certification – the improvements suggested in Recommendations No. 3 and 4. would be sufficient to effectively deter unlawful employer interference and fully remedy it when it does occur, given the inherent power imbalance between the employer and employees in a workplace.

Sandra Banister's dissenting recommendation to re-instate card-check certification as “the single most effective mechanism to avoid unlawful employer interference and to ensure employee choice” (p. 13) would better restore fairness and provide access to the right to unionize to more workers. The dissenting recommendation should be adopted by the panel and the BC government.

In addition, the traditional union organizing model used in BC requires organizing employees worksite by worksite, which worked well at the time the law was designed and large corporate employers with relatively few locations were the norm. However, this model makes it impractical to organize small sites, whether they are independent small employers, locations of a single (often large) corporate chain or franchisees. Many vulnerable workers in smaller workplaces don't have meaningful access to collective bargaining as a result, including many women, immigrants and workers of colour.

To provide precarious, temporary and low-paid workers in small worksites with a collective voice and union representation, BC should enable sectoral models of union organizing. This would allow for multiple worksites operated by a single employer to be organized in a more time- and cost-efficient manner, as well as provide viable organizing options for multi-employer sectoral organizing in traditionally difficult-to-organize industries.

A specific model for sectoral certification in BC was developed by the 1992 panel of special advisors appointed to review provincial labour regulations but your panel's report appears to dismiss it without addressing its actual merit on the grounds that it wasn't adopted by the government at the time. Similarly, the rich analysis of numerous options for broader-based organizing and bargaining models considered through the Ontario Changing Workplaces Review not reflected in your report, which only mentions in passing that the Ontario Report's recommendation for sectoral certification and bargaining in the franchise sector was not ultimately adopted by government.

Only considering labour law reforms that have already been introduced elsewhere in North America is a missed opportunity to position BC as a leader in meaningfully extending access to unionization to precarious employees. The panel could have undertaken its own research and analysis of the issue even if it did not receive sufficient information during the consultation to make concrete recommendations.

Given the trend towards increasing number of workers employed by smaller enterprises, BC should appoint a separate commission to engage in consultation and undertake independent research to make recommendations about enabling sectoral certification and sectoral bargaining in the province.

In summary, your panel's report makes a number of useful recommendations that would represent improvements to existing labour laws, however, it does not go nearly far enough to address the challenges faced by vulnerable workers in BC, particularly those employed in precarious sectors and smaller enterprises. Restoring card-check certification and enabling sectoral certification and bargaining are key reforms needed to meaningfully extend access to collective bargaining to more lower- and middle-income workers and ensure that BC's prosperity is shared more broadly across the province.

I urge you to strengthen your report's recommendations as outlined above to level the playing field for labour relations and remedy the power imbalance between workers and employers, which has been tilted too far in favour of employers. The BC government would be well advised to implement a bold package of labour law reforms to curb the far-reaching negative social consequences of the rise of precarious, low wage work and support a healthy, sustainable and inclusive economy.

Sincerely,



Iglia Ivanova
Senior Economist, CCPA-BC

CC: The Honourable Harry Bains, Minister of Labour