



HOSPITAL EMPLOYEES' UNION

PROVINCIAL OFFICE:

5000 North Fraser Way, Burnaby, BC V5J 5M3 • TEL: 604-438-5000 • FAX: 604-739-1510 • WEB: www.heu.org

November 29, 2018

Hon. Harry Bains
Minister of Labour
Parliament Buildings
Victoria, B.C.

By Email: LBR.Minister@gov.bc.ca

Dear Minister Bains,

Re: Feedback on the Panel's Report in the Section 3 Review of the Labour Relations Code

I am writing to provide feedback from the Hospital Employees' Union (HEU) on the Panel Report in the recent review of the *BC Labour Relations Code*.

HEU is the oldest and largest health care union in British Columbia representing 49,000 members working for public, non-profit and private employers. Since 1944, HEU has been a strong and vocal advocate for better working conditions for our members and for improved caring conditions for those accessing health care services.

HEU members work in all areas of health care and in the community social services sector, as well. Over the past 16 years, these sectors have been rocked by government legislation designed to facilitate de-unionization, privatization and contracting out. Workers' ability to join and maintain their membership in a union, and to secure and maintain collective bargaining rights, has been severely compromised in these sectors, as have the public services they deliver.

The specific barriers that health and social services workers face in exercising their *Charter* and *Labour Code* rights must be addressed as a matter of urgent public policy. So we agree with you that a rebalancing of workers' and employers' interests in BC's labour relations regime was long overdue.

HEU would like to thank the Minister for initiating the current review, and also thank the Review Panel.

While our union does not agree with all of the Panel's recommendations, we feel it has largely succeeded in its mandate to fashion recommendations that, if enacted, will promote "fairness" and "stability" in BC's labour relations.

Our detailed feedback is set out below. We address Panel Recommendation #12 first, since that is the most vital recommendation for our members. After that, we comment on recommendations in their numerical order.

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Recommendation No. 12 – Deem contract re-tendering a successorship in designated sectors.

HEU strongly supports the Panel’s Recommendation #12, which would deem the re-tendering of contracts in the health and other sectors to constitute a successorship under s. 35 of the *Code*.

We urge the government to go further, however, to deem the initial contracting out by health sector employers a successorship under s. 35 of the *Code*.

We also ask the government to extend these protections to workers in the community social services sector.

These changes to the *Code* would reduce the chaos and instability that for the past 16 years has undermined quality care in B.C.’s residential care facilities, community agencies, hospitals and other health care settings.

In its oral hearings, the Panel heard HEU members describe how care contracts at seniors’ facilities were flipped multiple times, and how workers lost all the rights they had negotiated, again and again.

Workers, some with many years of service, were fired and forced to apply for their old jobs and to repeatedly re-organize, facing cuts in pay and worsening conditions with each new collective agreement.

Dysfunctional contract flipping in the health sector and the negative effects on quality care have been notorious. In all, the Panel was advised that more than 10,000 workers, most of them women, and disproportionately workers of colour, have been impacted by the destructive practices in the sector, .

The profound impact that contract flipping has had on workers and those receiving care in the health and community social services sectors cannot be overstated. And while HEU welcomes the Panel’s recommendation on successor rights for health sector services, and other services outside health care such as building, cleaning, security and bus transportation, we believe the Panel’s recommendations should be extended to workers in other precarious services such as food services.

HEU strongly support the Panel’s recommendation that would allow sectors to be added to this provision by Order-in-Council. We would encourage the government to expand the list of protected sectors with a view to creating both stable labour relations and socially desirable outcomes in the economy.

One of the consequential amendments the Panel has recommended is the repeal of certain provisions of the *Health and Social Services Delivery Improvement Act* (Bill 29) and the *Health Sector Partnerships Agreement Act* (Bill 94) which are inconsistent with its proposed *Labour Code* amendments.

HEU would like to thank the government for its introduction and passage of Bill 47, the *Health Sector Statutes Repeal Act*, which has repealed Bill 29 and Bill 94 in their entirety.

While the passage of the Panel's recommended *Labour Code* provision is vital, the repeal of Bills 29 and 94 facilitates a path forward toward stable quality health care in B.C. and is also deeply symbolic for our members.

The outpouring of emotion from floor of our recent union convention floor when our members watched the televised first reading of Bill 47 from the legislature is hard to describe. It was an attestation to the injustice they suffered under these laws since 2002.

Recommendation No. 2 – Require a *Code* review at least every 5 years.

HEU supports the recommendation.

Recommendation No. 3 – Narrow permissible employer speech.

HEU strongly supports the recommendation.

Recommendation No. 4 – Strengthen remedial certification provisions.

HEU strongly supports the recommendation.

Recommendation No. 5 – Retain certification by secret ballot (vs card check).

HEU rejects the Panel's recommendation to retain the secret ballot vote.

We strongly support the dissent of Panel member Sandra Banister.

Recommendation No. 6 – Hold certification votes within 5 days.

HEU strongly supports the recommendation.

Recommendation No. 7 – Limit the Board's use of mail ballots.

HEU strongly supports the recommendation.

Recommendation No. 8 - Make membership evidence valid for 6 months.

HEU strongly supports the recommendation.

Recommendation No. 9 - Require the employer to provide a list of employees when a certification application is made.

HEU strongly supports the recommendation.

Recommendation No. 10 – Limit the "raiding season".

HEU strongly supports the recommendation.

Recommendation No. 11 – Allow a successor union to terminate an existing collective agreement.

HEU would support this recommendation only if recommendation No. 10 were also enacted in the amended *Code*.

Recommendation No. 12

See above.

Recommendation No. 13 – Appoint a commission to review the forestry industry.

HEU supports the partial dissent of Sandra Banister recommending the extension of successorship protection to the re-tendering of contracts in the logging sector.

Recommendation No. 14 – Extend the statutory “freeze” period from 4 to 12 months.

HEU strongly supports the recommendation.

Recommendation No. 15 – Consequences for not filing a collective agreement with the Board

HEU accepts there may be some benefit to consistently filing collective agreements with the Board. We do not agree that the consequences spelled out in subsection 3 for failing to file are appropriate.

Recommendation No. 16 – Allow parties to request a facilitator to assist with s. 54 adjustment plans.

HEU is asking the government to amend s. 54 to provide that where parties have met and failed to agree on an adjustment plan, either may apply to the Board for an order referring outstanding issues to binding arbitration.

That said, we support the Panel’s recommendations #16 and #17 (below) as an improvement on the current *Code* provisions, provided both recommendations are passed into law together.

Recommendation No. 17 – Allow parties to request a mediator with powers to demand information from the employer and to make recommendations on the terms of an adjustment plan.

See above.

Recommendation No. 18 - Delete the requirement for a majority strike vote in order to access first contract mediation. Let the Board decide whether an issue should be decided by strike or lockout.

While HEU made a more extensive recommendation in relation to s.55 of the Code. HEU accepts the Panel’s analysis and recommendation of this point.

Recommendation No. 19 – Let sectoral multi-employer collective bargaining be examined by industry councils or an industrial inquiry commission.

HEU urges the government to go further than this recommendation and to strike a committee of special advisors under s. 3(1) b of the *Code* to recommend amendments for broader-based sectoral bargaining in health, and other appropriate sectors. For example, sectoral bargaining would be beneficial for workers, employers, and the public in privatized and non-profit residential care.

This would force businesses to demonstrate their competitive advantages through quality and efficiency rather than by driving down labour costs. The race to the bottom resulting from a lack of sectoral standards creates instability and churn, and hurts residents, patients and their families, workers and businesses.

Recommendation No. 20 – Maintain the restrictions on both secondary picketing and use of replacement workers. Amend the definition of “picketing” to exclude consumer leafleting.

HEU rejects the restriction on secondary picketing recommended by the Panel.

We support the amended definition of “picketing” in so far as it excludes consumer leafleting.

Recommendation No. 21 – Delete the inclusion of education as an essential service.

HEU supports the recommendation.

Recommendation No. 22 – Change the focus of industry advisory councils.

HEU supports the recommendation.

Recommendation No. 23 and No. 24 – Speed up expedited arbitrations under s. 104

HEU did not make its own submissions on this topic, but generally supports the Panel’s proposed solutions to minimize delay in the expedited arbitration process.

Recommendation No. 25 – Codify the scope of the Court of Appeal’s review of arbitral decisions narrowly

HEU supports the recommendation.

Recommendation No. 26 – Ask the Legislature to consider amending the ATA to change courts’ standard of review to one of reasonableness for all tribunals.

HEU supports the recommendation.

Recommendation No. 27 – Require the Board to provide specific information about the Act to employees, employers and the public

HEU supports the recommendation.

Recommendation No. 28 – Increase the maximum fines that can be imposed for failure to comply with Board orders.

HEU supports the recommendation.

Recommendation No. 29 – Increase the Board’s funding to enable it to meet its duties under the Code.

HEU strongly supports the recommendation.

Rejection of unions’ call to amend the Code to preclude partial decertifications

The Panel expressed its decision to leave this issue to be addressed by Board policy. HEU disagrees with this decision and would support the amendment called for by other unions.

In closing I would like to thank you for this opportunity to respond to the Panel’s report.

Our members look forward with hope to the passage of an amended *Labour Relations Code* in 2019 that will fix longstanding problems in the health and community social services sectors and serve the interest of all British Columbians.

Yours truly,

A handwritten signature in black ink, appearing to read "Jennifer Whiteside". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jennifer Whiteside
Secretary Business Manager
Hospital Employees’ Union