INTERIOR
FOREST
LABOUR
RELATIONS
ASSOCIATION

320 - 1855 KIRSCHNER ROAD
KELOWNA, B.C. V1Y 4N7
TELEPHONE: (250) 860-3592
FAX: (250) 868-2977

November 29th, 2018

Labour Code Review Panel
Via email: LRCReview@gov.bc.ca

Dear Panel,

Re: Submission regarding Labour Code – Proposed Changes

Introduction

The IFLRA is the primary bargaining representative for the southern interior forest industry. Currently we have 10 member companies with 17 operations who collectively employ approximately 2800 workers in this region. Our membership consists of largely multinational companies as well as privately held companies working in the forest industry. The mandate of the IFLRA not only includes representing our members and collective bargaining and assisting in contract administration, but also lobbying government for the preservation of their collective interests.

This submission is in response to the invitation by the government to make comments on the recent report entitled *Recommendations for Amendments to the Labour Relations Code*, dated August 31, 2018.

At the outset, we note that the province has enjoyed relative labour stability since the last major review of the Code, and we caution the government from making unnecessary changes to the Code in order to appease supporters of the party in power. We have witnessed dramatic swings and legislation in other provinces; in particular Ontario as a result of political swings in the government. These significant and unnecessary legislative changes have increased the cost of businesses in Ontario and created an unstable environment. We wish to avoid a similar period of instability in British Columbia.

There are some recommendations that we fully support and those include the following:

- The recommendation to amend section 53 (5) to allow the appointment of a Board facilitator at the request of either party.

- Changes to the definition of picketing in light of the Supreme Court of Canada decision in UFCW Local 1518 and Kmart Canada Ltd.

- Changes to sections 87 and 89 to facilitate better utilization of settlement officers and more effective case management.

INTERIOR
FOREST
LABOUR
RELATIONS
ASSOCIATION

320 - 1855 KIRSCHNER ROAD
KELOWNA, B.C. V1Y 4N7
TELEPHONE: (250) 860-3592
FAX: (250) 868-2977

- The proposed amendments to section 104 are very welcome.

- Expanding the grounds of appeal under section 100 to the British Columbia Court of Appeal is a needed amendment.

- We also support the final recommendation that the Board be adequately funded to enable it to meet its obligations under the Code.

There are, however, a number of proposed amendments which in our view move the pendulum too far and are contrary to the Review Panels' cautionary warning at page 7:

> "There have been a number of pendulum swings in important Code provisions over the past 30 years largely depending upon the governing political party. This is not consistent with predictability, certainty or balance. Although not an easy task, it is essential to avoid pendulum swings by implementing balanced changes that are sustainable. Certainty and predictability are important considerations for investment decisions and the competitive position of BC and an increasingly globalized economy."

We will now focus our comments on those proposed amendments that in our view are troubling, unnecessary, and will adversely impact our industry.

Employer Free Speech

The premise of these proposed changes is that any communication from an employer is intimidating, coercive and likely to deceive gullible employees. The statement by the panel that the interests of employees and employers are distinct and not aligned is a broad and inaccurate statement. There are some interests where they may not be aligned but there are many interests where they are aligned. It is in the employees interest to have a financially viable employer that is competitive in a global environment. The labour board is not in a position to provide information about industry competitiveness and other issues that may impact the viability of the employer's undertaking. Any limitation on the employer's ability to engage in a discussion with its employees about these key issues is bad policy and imposes an unnecessary limitation on the distribution of critical information. We oppose the proposed changes to limit employer free speech.

There are safeguards in the Code to prevent truly coercive behaviour on the part of employers. Those procedures have an effective remedy and, as such, limiting free speech is unwarranted.

INTERIOR
FOREST
LABOUR
RELATIONS
ASSOCIATION

320 - 1855 KIRSCHNER ROAD
KELOWNA, B.C. V1Y 4N7
TELEPHONE: (250) 860-3592
FAX: (250) 868-2977

Remedial Certifications

As we represent a stable industry from an industrial relations perspective, new certifications do not particularly impact our industry. However, we do take issue with the Panels' recommendation to increase the use of remedial certifications. In many workplaces, there are groups of employees that support union representation and there are groups of employees that have very legitimate concerns about introducing union representation to their workplace. Remedial certifications should only be applied where the true wishes of the employees cannot be determined as a result of the conduct of the employer. Otherwise, the Code will eliminate the franchise of all employees including those that oppose the union. Those employees should not lightly lose their right to express their wishes as a result of the conduct of the Employer. The suggestion that a remedial certification be used as a deterrent for employer misconduct does not acknowledge that the penalty will be paid by those employees that do not want union representation. Accordingly, remedial certifications must be used sparingly and only when the true wishes of the employees cannot otherwise be determined.

Access to Collective Bargaining

We are encouraged by the Panel's recommendation to maintain the secret ballot as in our view only through a secret ballot will the certification process maintain its integrity. The suggestion that the vote must occur within five days will present many administrative challenges for the Board and its officers and deny the opportunity for the workplace to have a discussion about the merits of the application. The 10 day window for the vote has been in place for decades and has provided a workable compromise between lengthy election campaigns and card based certifications in which there is no opportunity for discussion or the exchange of information. One must bear in mind that the union may have engaged in planning the certification application for months, certainly weeks, and to deny the employer and those employees that have concerns about the application an adequate time frame to respond is unfair, and unnecessary.

We have significant concerns about the potential for abuse regarding the production of employee lists. With no minimum threshold, unions may file an application for certification solely for the purpose of obtaining the employee list. Surely this was not the objective of this recommendation. Accordingly, there must be a minimum threshold before an employee list can be compelled. We are suggesting the minimum threshold be 45%.

Raids

While this issue is not a primary concern to our industry, we do not see the need to put artificial boundaries around raid windows as has been done in some other jurisdictions.

INTERIOR
FOREST
LABOUR
RELATIONS
ASSOCIATION

320 - 1855 KIRSCHNER ROAD
KELOWNA, B.C. V1Y 4N7
TELEPHONE: (250) 860-3592
FAX: (250) 868-2977

Our primary concern is that smooth and constructive labour relations is contingent upon a good representative for the workers and a motivated employer. If there are issues with the worker's representative in that it does not have the support of the employee group, prolonging that situation does nothing to enhance industrial stability or sound labour relations.

We strongly oppose the recommendation that the Board have the discretion to terminate a collective agreement following a successful raid. If the object of the proposed Code changes is to ensure economic stability and minimize labour unrest, respecting collective agreements as opposed to terminating these agreements prematurely would more effectively achieve that objective. Employers make strategic decisions based upon a variety of factors some of which they can control and some of which they cannot. Labour costs are one of the issues that can be controlled by long-term collective agreements. Permitting those long-term collective agreements to be prematurely terminated at the whim of the employees denies the employer's ability to engage in long-term planning.

Successorship

We strongly oppose the proposed changes to section 35 of the Code and the creation of any Industrial Inquiry Commission to review the forest industry. The implications of granting successorship where one employer loses a contract to another is profound and often overlooked. In the forest industry and in particular in the coastal forest industry under the Woodlands Letter of Understanding, contracted out employees have successorship rights that seemingly last in perpetuity. From a practical matter, that means the contractor who is actually employing these workers has limited, ability to incentivize these workers to be efficient, diligent and cost-effective in their work. The simple reason is that workers do not care if the contractor survives or not as they know their employment will simply be continued with a new company.

To the extent that you remove the cost of economic failure from the workers you remove the incentive to ensure that employers survive. If you have established a labour code in which you demotivate workers and insulate them from the consequences of failure you will have done a significant disservice to British Colombians. An employee group must be vested in the fortunes of their employer in order for an appropriate and measured collective bargaining regime to develop.

Our concern is that whatever changes are proposed in the healthcare sector will incrementally impact the rest of the economy, and ultimately our industry. We also oppose the creation of an Industrial Inquiry Commission to look into successorship issues in the forest industry. While we anticipate that the genesis of these concerns originates in the Coast, the consequences for any adverse change in the legislation would be felt in the

INTERIOR
FOREST
LABOUR
RELATIONS
ASSOCIATION

320 - 1855 KIRSCHNER ROAD
KELOWNA, B.C. V1Y 4N7
TELEPHONE: (250) 860-3592
FAX: (250) 868-2977

interior as well. We see no reason for the forest industry to be singled out for specific scrutiny. It is apparent that the Steelworkers who are the primary union in the forest industry have made a strong argument in favour of this change, but their argument appears to be based upon Steelworker institutional interests.

Adjustment Plans

We oppose the proposed ability to have a mediator make nonbinding recommendations in the event mediation is unsuccessful. Moreover, the issue with nonbinding recommendations is that they may create expectations that will not be met and thus exacerbate an already difficult situation.

First Collective Agreement Arbitration

We strongly oppose the elimination of the requirement for a strike vote in order to access the section 55 process. The requirement for a strike vote represents the demonstration of the mandate of the union to embark upon the collective bargaining process. As the section 55 process can also result in a binding arbitration (as well as mediation) the requirement to have a strike vote is a necessary threshold to demonstrate a bargaining mandate.

Filing Collective Agreements with the Board

We have significant concerns regarding these proposed changes. With any collective bargaining relationship there are numerous Letters of Understanding, Memorandums of Agreement and Local Agreements that amend the collective agreement. In some cases, parties struggle to identify all of the relevant documents. The requirement that all of these be sent to the Board on the penalty of losing access to the Board is a significant and unwelcome change. Consider an example of an illegal strike where the Union holds back and says that a little-known LOU was not disclosed to the Board and uses that as an argument to deny a remedy to the Employer.

Joint Consultation

While we applaud the efforts to encourage and facilitate a consultative process in dealing with Labour Relations issues, a consultation will only work if both parties are amenable. The ability to require a joint consultation where one party is opposed to the process is doomed to failure and would only frustrate the process further. This process could be used by one party simply for the purposes of delay. We strongly recommend that this proposed change not proceed.

INTERIOR
FOREST
LABOUR
RELATIONS
ASSOCIATION

320 - 1855 KIRSCHNER ROAD
KELOWNA, B.C. V1Y 4N7
TELEPHONE: (250) 860-3592
FAX: (250) 868-2977

Sectoral Bargaining

We strongly oppose mandatory sectoral bargaining. It is best left to the parties to determine whether voluntary sectoral bargaining is in their interests and who the participants of that group should be. Some employers have similar interests while others do not. Successful sectoral bargaining requires common interests and a willingness to work cooperatively. If that is not present, the imposition of sectoral bargaining will create unrest, friction and uncertainty. None of which is a desired outcome. Quite clearly, the parties are in the best position to determine the merits of sectoral bargaining and the participants on a voluntary basis.

Fines

The Board has significant jurisdiction to grant remedies for an established breach of the unfair labour practice provisions of the Code. In light of that, additional fines are punitive and unnecessary. The prospect of losing an adjudication with the Board and the ability of the Board to fashion a suitable remedy represents a significant and credible deterrent to employer misconduct.

In closing

The IFLRA appreciates the opportunity to comment on this report produced by the review panel. We are prepared to meet with the Minister of Labour and other government representatives to further discuss the positions we have put forward in our submission.

Sincerely,

Jeff Roos
IFLRA President