

SUBMISSION OF THE COALITION OF BC BUSINESSES TO THE BC LABOUR RELATIONS CODE REVIEW COMMITTEE

Executive Summary

The Coalition of BC Businesses is made up of associations representing over 50,000 small and medium-sized businesses in various sectors of the BC economy.

Since 1992, the Coalition has advocated for labour and employment policies that reflect the principles of fairness, realism, flexibility and individual choice. The Coalition believes that British Columbia's collective bargaining laws must be based on two fundamental principles: employee free choice and enterprise-based bargaining which reflects the needs and circumstances of individual business enterprises.

Collective bargaining is only valid if it reflects the true wishes of the employees of a business enterprise, and businesses can only succeed where the terms and conditions of employment for the employees reflect the particular needs and circumstances of that enterprise.

The following is a summary of the Coalition of BC Businesses recommendations to the Labour Relations Code Review Committee:

ISSUE 1: *Definition of an Employee*

The current definition of should be expanded to include members of the management team.

ISSUE 2: *Picketing*

The definition of picketing should be as close as possible to the prior definition of picketing, subject to the modifications required by the Supreme Court of Canada's decision in the *KMart* case, to clearly delineate the circumstances in which consumer leafleting at the premises of a third party will be permissible.

ISSUE 3: *Unfair Labour Practices (Part 2)*

The unfair labour practice provisions of the *Code* should be expanded to ensure that employees enjoy the same protection from coercion, intimidation, threats or promises made by a trade union in a decertification application as those which apply to employer conduct in a certification application.

ISSUE 4: *Duty of Fair Representation Complaints*

To streamline and deal more effectively and efficiently with s. 12 complaints filed by trade union members a Labour Ombudsman should be appointed to assist in preventing and resolving issues arising between union members and trade unions.

ISSUE 5: *Changes in Union Representation*

Consideration should be given to lengthening the period between raid applications on a sectoral or industry-specific basis to reduce disruption caused to a workplace by union representation issues, including the associated campaigns and workplace uncertainty.

ISSUE 6: *Revocation of Bargaining Rights -- Partial Decertification*

The *Code* must be amended to explicitly recognize a right to partial decertification and the Board should process such applications on an expedited basis if the requirements are met.

ISSUE 7: *Revocation of Bargaining Rights due to Lengthy Shutdown*

The *Code* should be amended to provide that if a company has not employed any persons in the bargaining unit (or been on strike) for over two years, the collective bargaining relationship is declared to be terminated, except where the union and employer have bargained recall rights for laid off employees that extend beyond two years.

ISSUE 8: *Applications for certification after a decertification*

The *Code* should be clarified to provide a 10-month bar following a successful decertification on any union, including the union that has just been decertified, from applying for certification for the same group of employees.

ISSUE 9: *Successor Rights and Obligations – Bankruptcy*

The possibility of successorship after the bankruptcy of a business should be eliminated.

ISSUE 10: *Successor Rights and Obligations – Contracting Out*

There should not be any provisions in the *Code* that would provide for a successorship in cases of contracting out.

ISSUE 11: *Mergers of Union Locals*

This is primarily a matter for the labour community to address.

ISSUE 12: *First Collective Agreements*

There should be no changes to s. 55 to either negate the requirement for a strike vote prior to the filing of a s. 55 application or to require that, in all cases, the Board order arbitration of a first contract if mediation is unsuccessful.

ISSUE 13: *Last Offer Votes*

The option for "last offer votes" should be retained in the *Code* to ensure that collective bargaining outcomes reflect the interests of the employees in circumstances where the position of the union or its bargaining committee deviates, or appears to deviate, from the interests of the majority of employees in the bargaining unit.

ISSUE 14: *Expedited Arbitration*

The s. 104 system should not take the place of privately negotiated and agreed expedited arbitration processes.

ADDITIONAL ISSUES FOR THE CONSIDERATION OF THE COMMITTEE

1. *Expedited hearings under s. 5(2) of the Code.*

S. 5(2) should be altered to provide for Board discretion as to whether to hold a hearing on an urgent basis, just as is the case for Part V applications for illegal strikes or picketing.

2. *Remedial certification*

The *Code* should be amended to clearly give the Board the power to order a certification vote in circumstances where a union can demonstrate that it has been unable to achieve the requisite 45% membership support for a certification vote as a result of employer unfair labour practices, but should not provide for remedial certification without a vote.

3. *Replacement workers*

The restrictions on use of replacement workers in the *Code* must be repealed. The provisions result in too great an imbalance between trade unions and employers, especially small business employers, in the context of a strike or lockout.

4. *Regulation of picketing of provincial enterprises by employees of federally regulated enterprises.*

The definition of "person" in s. 1 of the *Code* should be amended so that it is clear that the exclusion of persons governed by the Canada Labour Code does not apply for the purposes of s. 67 of the *Code*.

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