COALITION OF BC BUSINESSES

Advancing Labour Policies that Work

Proposed Amendments to the

BC LABOUR RELATIONS CODE

October 2006

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.
- The 2002 reforms to the *BC Labour Relations Code* created a more flexible and a modern work environment that enshrined employee rights and enhanced the economic viability of BC businesses.
- However, some sections of the *Code,* and the Board's interpretation of it, continue to limit the protection and promotion of individual employee rights.
- The Coalition believes that British Columbia's labour relations framework must evolve to continue to enhance employee rights and the economic viability of BC businesses.
- BC's economic competitiveness and the province's current labour shortage make the issue of employee rights and labour law reforms all the more relevant and urgent.

The following is a summary of the Coalition's proposed amendments to the *Code*:

1. **Partial decertification:** Amend the *Code* so that the rules governing decertification are the same as certification.
2. **Employee Advisor Office:** Establish an Employee Advisor Office to assist employees before the Board to ensure access to representation and labour relations advice.
3. **Remedial authority of the Board:** Remove the Board's remedial authority to impose a certification or dismiss a decertification without a vote.
4. **Confidentiality of union card cancellations:** End the requirement that employees must notify the union when canceling a union membership card during an organizing campaign.
5. **Employee dues check-off:** Implement a dues check-off system that would enable employees to authorize whether they wish to have their union dues spent on any activities other than the administration of their workplace's collective bargaining relationship.
6. **Employee rights of association:** Remove the provision that requires an employer to terminate an employee because the employee has been expelled or suspended from a union for a reason other than failure to pay union dues or initiation fees.
7. **Duty of Fair Representation complaints:** Appoint an Employee Advisor to assist in resolving issues arising between union members and trade unions.
8. **Final Offer Votes:** Amend s. 78 to permit last offer votes either before or during a strike as a matter of statute.

9. **Successorship Rights and Bankruptcy:** The *Code* should be amended so that employees have a choice about union representation when a bankrupt business is restarted. The new owners should not be required to inherit the previous union certification and collective agreement.
10. **Replacement Workers:** The current ban on replacement workers represents a profound power imbalance between big unions and small businesses. The *Code* does not intend that a labour dispute should destroy a small business, and the ban on replacement workers should be eliminated, at least with respect to small business.
11. **Free Speech Picketing:** Enact a new definition of picketing to provide clarity of what constitutes picketing and what type of labour activities will be included and exempted from the Board's regulation. One approach is to state that picketing excludes "consumer leafleting".
12. **Union Raids:** Union raids should be limited to the last two months of a collective agreement term.
13. **Time Bar Orders after Decertification:** Impose a ten-month time bar on all unions from engaging in a certification campaign after a union has been decertified.

About the Coalition of BC Businesses

The Coalition of BC Businesses was formed in 1992 to represent the voice of small and medium-sized businesses in the development of British Columbia's labour and employment policies.

The Coalition is made up of organizations that collectively represent over 50,000 small and medium-sized businesses active in all sectors of BC's diverse economy in communities throughout the province. The Coalition's sole focus is the development of labour policies that will help foster a positive relationship between employers and employees and a climate for economic growth, opportunities and jobs.

Introduction

2002 *Code* reforms strengthen employee rights and economically viable BC businesses

In 2002, the BC government charted a new course in labour policy consistent with its New Era commitments. The reforms created a more flexible and modern work environment that enshrined employee rights alongside employer and union rights, and enhanced the economic viability of BC businesses.

Government amendments to the *Labour Relations Code* provided a framework for labour and management to build healthy workplaces and competitive enterprises that could succeed in the global market. The amendments provided greater protection for employees by ensuring that job security and viability of business are considered in Board decisions. The BC government's *Labour Relations Code* amendments included:

1. Restoring employees' democratic right to a secret ballot vote on certification
2. Replacing the membership card-based system for certification with a mandatory secret ballot vote in all cases
3. Legislating employers' right to free speech during certification drives
4. Restoring the right of all employees' to negotiate contracts by repealing sectoral bargaining

Coalition Member Associations
BC & Yukon Hotels' Association
BC Chamber of Commerce
BC Restaurant and Foodservices Association
BC Trucking Association
Building Owners & Managers Association
Building Supply Dealers Association
Canadian Home Builders' Association – BC
Canadian Restaurant and Foodservices Association
Council of Tourism Associations of BC
Independent Contractors and Businesses Association
Insurance Brokers Association of BC
New Car Dealers Association of BC
Retail Council of Canada
Retail BC
Vancouver Board of Trade
Western Silvicultural Contractors' Association

The 2002 reforms enshrined in law the concept of employee rights and made BC the only jurisdiction in Canada to explicitly do so. The Purposes section of the *Code* was amended to recognize employees as a third pillar in BC's labour relations process, alongside employers and unions.

By adding this Purpose or, as it is now called, Duty to the *Code*, the Legislature gave express protection to employee rights, a protection that hitherto did not exist. This amendment was an historic step in recognizing that, notwithstanding the benefits of collective representation by a union, individual employee rights and freedom of choice must be protected

Despite this amendment, some sections of the *Code,* and the Board's interpretation of it, remain inconsistent with the Duties clause of the Act and limit the protection and promotion of individual employee rights.

Enhanced employee rights foster economic development

BC's economic competitiveness and the province's current labour shortage make the issue of employee rights all the more relevant and urgent. Positioning BC as a champion of employee rights will enhance the province's reputation as a stable and attractive destination for employees and investors alike.

The Coalition of BC Businesses believes that British Columbia must continue the job of promoting employee rights and freedom of choice by building on the spirit of the 2002 Code amendments.

The BC government should enact amendments to the *Code* that empower individual employee rights but, of equal importance, the Labour Relations Board must relax some of the rigid standards and requirements that limit employee participation in the labour relations process.

Coalition consults with small and medium-sized businesses

In formulating its observations and recommendations, the Coalition has sought advice from a variety of sources. Most importantly, the Coalition was able to draw on the input of people who operate small and medium-sized businesses and are members of the various associations that comprise the Coalition. Their experiences with BC's labour policies provide a most valuable benchmark of the effectiveness of these policies and what is needed to move forward.

The recurring theme is that BC's labour relations framework must enhance the principles of fairness, realism, flexibility and individual choice. That theme informs the Coalition's Guiding Principles which underlie the recommendations that follow.

Coalition of BC Businesses: Guiding Principles

Sound and fair employment laws and practices are one of the cornerstones of a vibrant and sustainable economy. The following principles are fundamental:

Employment laws and practices should be realistic: Employment laws and practices must recognize the new ways in which work is being done so they facilitate new work arrangements and enable British Columbia to remain competitive. They should also recognize the practical limitation of efforts to pursue social policy goals through the imposition of obligations on employers.

Employment laws and practices should be flexible: Employment laws and practices should allow businesses to adapt to the needs of their customers, the aspirations of their employees and to the constantly changing business environment. They should encourage innovative solutions, such as training, that make businesses and employees successful.

Employment laws and practices should respect individual choices: Employment laws and practices should allow employees to make up their own minds about what kinds of workplace arrangements best suit their needs.

Employment laws and practices should promote voluntary cooperation between employers and employees: Employers and employees cannot succeed without each other's cooperation, and our employment laws should encourage (though they cannot require) solution of problems through mutual agreement.

Employment laws and practices should be fair for all: Employment laws and practices should not give special advantages to anyone and they should be administered in a manner that contributes to the confidence the community has in the essential fairness of the laws.

Employment laws and practices should provide a basic standard of protection for employees: Employment laws and practices should set a floor below which employment standards may not fall, to ensure a minimum level of employee protection.

Moving forward with further labour code amendments

The job of developing fair and balanced labour laws in BC is incomplete. Protecting the individual rights of employees and fostering the economic viability of businesses are paramount goals for the province.

The Coalition's membership has identified the following areas of the *Code* that, once amended, would strengthen employee rights and BC businesses.

Enhancing employee rights:

1. Partial Decertification
2. Employee Advisor Office
3. Remedial Authority of the Board
4. Confidentiality of Union Card Cancellations
5. Employee Dues Check-off
6. Employee Rights of Association
7. Duty of Fair Representation Complaints
8. Final Offer Votes
9. Successorship Rights and Bankruptcy

Enhancing the economic viability of BC businesses:

10. Replacement Workers
11. Free Speech Picketing
12. Union Raids
13. Time Bar Orders after Decertification

Enhancing Employee Rights

1. Partial Decertification

The Board's treatment of partial decertifications (section 142) handicaps employees' free choice to belong or not to belong to a union.

A common theme of fairness is that "decertifications should mirror certifications". However, this mirror is not applied to partial decertifications. They do not mirror either the manner in which the group in question became certified or the variance certification process under the *Code*. The result is a process which is complex, incomprehensible to employees and which undermines employee free choice. At a minimum, fairness requires that, "as you go in, so should you be able to come out."

In the case of White Spot, where 50% of the restaurants were certified one at a time, there has been a great debate over whether a single decertification should mirror the certification process, i.e. decertify one at a time. Or whether once certified, there is an integration of restaurants that should make single store decertification more difficult.

Understanding how to make an application for partial decertification is very difficult for employees. The Board's form requires an analysis of appropriateness that most workers do not understand. Currently, the steps are:

- The employees making the decertification application, without any assistance from the employer, must show that the remaining certification is appropriate for collective bargaining.
- The same employees must show that a rational and defensible boundary can be drawn around their group.
- The LRB then exercises its discretion by looking at the impact a successful decertification application would have on the remaining employees, any destabilizing effect, the timing of the application, employer interference and any other factor raised from the circumstances of the case.

All of these steps can be legally and factually complex, making it virtually impossible for employees to proceed with partial decertification applications without legal counsel. In addition, the level of discretion inherent in each of these steps makes it very difficult to predict how the Board will decide any given application.

The complexity of the Board's current process for partial decertification applications means that unions have the ability to seriously delay these applications by raising objections on every point. The result can be delays of months or even years, during which time the employees remain in the bargaining unit against their wishes and are required to pay dues. This is extremely unfair to a group of employees who are seeking to leave the union, particularly if they do not feel well-represented by the union. To avoid this outcome, payment of dues should be frozen at the time a partial decertification application is filed, and only reinstated if the application is dismissed or withdrawn.

Partial decertifications are currently handled under Section 142 of the *Code*. This gives the Board discretion to vary a certification - causing confusion over Board case law. The better approach would be to move partial decertifications to Section 33 - *Revocation of Bargaining Rights* - and then establish clearly in the *Code* how those certification rights can actually be revoked. This will reduce the application of discretion as well as the ability of unions to delay these applications.

Recommendations:

- Amend the *Code* so that the rules governing decertification are the same as certification. A group of employees must have the right to decertify if they no longer want union representation and they should not be confronted with difficult rules or unnecessary roadblocks in doing so.
- Include a clear right to partial decertification in the *Code*, on the same footing as a full decertification, which clearly spells out the requirements for such applications and requires the Board to process them on an expedited basis if the requirements are met.
- Provisions in the *Code* should make it clear that employee groups who are varied into a larger bargaining unit at the time of certification should be entitled to exercise a right to decertify on the same basis.
- Payment of dues should be frozen at the time a partial decertification application is filed, and only reinstated if the application is dismissed or withdrawn.

2. Employee Advisor Office

Individual employees currently lack the means and know-how to pursue their rights under the *Code* equal to employers, unions and employees represented by unions. Employees who have concerns about a union's conduct cannot access the same level of resources available to employees who have concerns about an employer's conduct.

Union members with concerns about their union, as well as employees who are of the view that a union has committed an unfair labour practice during a certification/decertification campaign, during a strike or with respect to the conduct of ratification votes, strike votes or votes on internal union affairs must proceed with a lawyer funded out of their own pocket, find pro-bono counsel or represent themselves.

The Ministry of Labour should establish an Employee Advisor Office. The Office would ensure employee access to representation and advice when they wish to file applications or submissions to the Board as well as when they want to or are compelled to appear before the Board.

Such an office is not without precedent. The Ministry of Labour currently operates a Workers' Advisers Office under Section 94 of the *Workers' Compensation Act.* Advisers provide direct assistance in resolving claims problems with the WCB and gather medical and other evidence to advance the inquiry system. Clients are provided with representation in cases involving complex legal, medical or policy issues where there is no alternate representative, and where there is merit.

Similarly, in the non-union setting, employees can access Employment Standards Officers who can call the employer, force them to produce documents and bring an employee's case against the employer through the mediation and adjudication process. No such recourse is available to employees pursuing complaints with a union.

The proposed Employee Advisor Office would advise and provide representation for all Duty of Fair Representation (DFR) applicants, and all employees alleging or defending Unfair Labour Practice complaints during certification and decertification drives, strikes, etc.

The concept of an entity outside the Board makes sense as the Board can play only a limited role in advising employees about their rights and obligations under the *Code*. Assisting any affected party, in any way, has a negative impact on the Board's neutrality.

The Office would go a great distance in assisting employees to understand their rights and obligations under the *Code*. Board cases would benefit from increased efficiency as employees who have access to assistance would help expedite the labour relations process.

Recommendation:

- Establish an Employee Advisor Office to assist employees before the Board to ensure access to representation and labour relations advice.

3. Remedial Authority of the Board

Employees' fundamental right to chose whether or not to have trade union representation is effectively stripped away when the Board exercises its remedial authority to dismiss an application for decertification, or impose a certification, if an employer has committed an unfair labour practice.

The consequence of an employer's misconduct in an application for a certification or a decertification should not be meted out to employees. Union certification and decertification should be reserved exclusively as an employee choice.

The Board's discretionary power to order a remedial certification without a vote is inconsistent with the requirement for a secret ballot vote on all certification applications. Alberta and Saskatchewan currently afford employees full protection of a democratic secret ballot vote on certification.

The *Code* should be amended to provide penalties other than remedial action by the Board if an employer is found to have committed an unfair labour practice,

The *Code* should be amended to clearly provide that the Board has 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 an employer's unfair labour practice, but should not provide for remedial certification without a vote.

Likewise in a decertification situation, the Board should not be permitted to simply dismiss the decertification application if an employer has committed an unfair labour practice. In order to ensure that employee choice is respected, the Board should be limited to ordering a new vote on the decertification application if it is established that the initial vote may not reflect employees' true wishes.

Recommendations:

- Remove the Board's remedial authority to impose a certification or dismiss a decertification without a vote, regardless of whether the misconduct was committed by the union or the employer.
- Amend the Code to provide penalties other than remedial certification or dismissal of a decertification application in cases where an employer is found to have committed an unfair labour practice.

4. Confidentiality of Union Card Cancellations

Currently, an employee in BC who signs a union card during a certification drive and later reconsiders is legally obliged to notify the union of his or her decision to cancel in addition to informing the Labour Relations Board.

Releasing an employee from the requirement to notify the union of a card cancellation would enhance freedom of choice by reducing an employee's natural reluctance to cancel when they must advise the same people who persuaded the employee to sign the card in the first place.

The decision to cancel a union card at this stage in the labour relations process should respect individual confidentiality. Employees wishing to cancel a union card should only have to notify the Labour Relations Board.

In Saskatchewan, an employee must only notify the Board when canceling a card during an organizing drive. Employees may choose to notify the union, but this is not a requirement. When considering a certification vote, the Board must evaluate the union's submitted cards with any cancellations received to determine whether or not the threshold for a vote is met.

An amendment preventing union access to card cancellations would mirror and align the principle that employers do not have access to signed union cards.

Recommendation:

- End the requirement that employees must notify the union when canceling a union membership card during an organizing campaign. Employees would continue to be required to notify the Board of a card cancellation.

5. Employee Dues Check-off

Employee rights are eroded under a system of mandatory dues collection that allows unions to earmark membership dues toward political and social activities. Employees who may not approve of the non-representative activities of a union, such as advertising in support of or opposition to a particular political party or social cause, have no choice but to fund these activities from their pay-cheques.

Mandatory dues should be regulated such that union dues would only be automatically earmarked for the administration of a workplace's collective bargaining relationship. Unions wishing to fund organizing, political and social activities should require explicit authorization by a dues check-off from each employee.

Employees would gain control over how their dues are spent and would no longer be forced to compromise their personal opinions or beliefs by supporting causes they may find objectionable. Employee check-off of dues would also foster a new level of union disclosure to members about how funds are spent.

Recommendation:

- Implement a dues check-off system that would enable employees to authorize whether they wish to have their union dues spent on any activities other than the administration of their workplace's collective bargaining relationship.

6. Employee Rights of Association

The right to join or not to join a trade union, free from pressure or coercion is called freedom of association, which the Supreme Court of Canada has found to include the right of non-association. Employee rights are limited by labour laws that make union membership a condition of employment at some places of employment. In some cases where union membership is a condition of employment, an employee can be terminated for falling out of favour with the union.

BC's labour laws are out of step with federal legislation that prohibits an employee from being terminated for any reason other than failure to pay dues and initiation fees.

The *Canada Labour Code* reads as follows:

> *95. No trade union or person acting on behalf of a trade union shall*
>
> *e) require an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;*

The *BC Labour Relations Code* should be amended to reflect sec. 95 (e) of the *Canada Labour Code*.

Recommendation:

- Remove the provision that requires an employer to terminate an employee because the employee has been expelled or suspended from a union for a reason other than failure to pay union dues or initiation fees.

7. Duty of Fair Representation Complaints

Employees who believe they have been unfairly treated by their union can take their complaint to the Board. However, the process a complainant must follow is complex and onerous and causes a perception among complainants that their rights and interests are not taken seriously.

> Section 12(1): *A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith:*
>
> *(a) in representing any of the employees in an appropriate bargaining unit…*

The Board's application of the words "arbitrary, discriminatory or in bad faith" do not conform to an everyday understanding of those terms, and as a result employee complainants find the system unfair and biased. Employees who try to file applications are overwhelmed by the difficulty of the process.

The Board imposes fairly stringent conditions on employees filing complaints against their union. Complaints now have to be established from an evidentiary basis before proceeding to a hearing, essentially requiring employees to retain legal counsel before approaching the Board.

The Employee Advisor, proposed earlier, would be a tremendous asset to assist employees in understanding the process and the strengths and weaknesses of their cases.

Concern has been expressed about the length of time and the amount of Board resources, as well as individual employee's own time and resources that are required in adjudicating these types of complaints. A fair process that is also more expeditious than what currently exists is in everyone's interests.

The Coalition supports initiatives to streamline and deal more effectively and efficiently with s. 12 complaints. The goal of a streamlined process must not be to simply process these issues more quickly, but to ensure that s. 12 complainants are given an efficient and effective forum to have their complaints heard and resolved. The Coalition suggests the creation of an Employee Advisor with the power to investigate complaints and issue recommendations to resolve such disputes at an early stage.

Recommendation:

- To streamline and deal more effectively and efficiently with s. 12 complaints filed by an employee, appoint an Employee Advisor to assist in resolving issues arising between union members and trade unions.

8. Section 78: Final Offer Votes

Section 78 allows an employer to seek a ratification vote of its "final offer" in collective bargaining. Rarely are these votes successful.

The *Code* requires the employer to make its application for such a vote prior to a strike. The Minister of Labour must approve an application made during a strike.

In drafting the *Code* in 1992, there was some concern that allowing final offer votes during a strike might, in fact, provoke strikes. That is because employers might take a strike for three or four weeks and, after their employees received their last cheque, apply for a mandatory final offer vote. Accordingly, the right to such a vote was limited to a pre-strike period.

A final offer vote should reflect the true wishes of employees. If the employees' true wishes are different during a strike than before a strike then those wishes should be able to be expressed through a last offer vote.

Last offer votes should also be a matter of statute, not discretion. Currently employers must use this "one-time only" tool before the commencement of a strike or lockout. If an employer wants to make a Section 78 application during a labour dispute, it must apply for an order from the Minister of Labour. We recommend that an employer not be restricted as to when it can utilize this tool.

Recommendation:

- Amend s. 78 to permit last offer votes either before or during a strike as a matter of statute.

9. Successorship Rights and Bankruptcy

The Supreme Court of Canada has recently confirmed that successor rights in a bankruptcy situation are a matter to be dealt with under applicable provincial labour legislation. It is therefore incumbent upon the BC government to ensure that this issue is appropriately addressed for BC business enterprises.

Successorship rights after bankruptcy act as a deterrent to a business re-entering the marketplace and frustrate employee free choice.

Currently, if an entrepreneur tries to buy and resurrect a bankrupt business, the new business is covered by the certification and collective agreements of the old, bankrupt business. The law undermines employee rights by essentially allowing jobs to be certified instead of workers.

Employees of the new business are denied the choice of whether they want union representation or which union to represent them, or whether the terms of a collective agreement for the bankrupt business are to be applied to them. This occurs in spite of the fact that the preexisting collective agreement may have been a contributing factor to the bankruptcy in the first place, and may be inconsistent with the successful operation of the new business.

It is in the public interest to promote re-entry into the marketplace of business principals who are willing to take entrepreneurial risks. And employees should have the choice about whether to be represented by a union and which union that should be.

Recommendation:

- The *Code* should be amended so that employees have a choice about union representation when a bankrupt business is restarted. The new owners should not be required to inherit the previous union certification and collective agreement.

Enhancing the Economic Viability of BC Businesses

10. Section 68: Replacement Workers

In the 1992 *Code*, the BC Legislature introduced a ban on the use of replacement workers in the event of a strike. In the Coalition's view, the experience with this legislation confirms that laws restricting the use of strike replacement workers is ill-conceived and is damaging to the BC economy and to small business particularly.

The replacement worker ban is a disincentive for investment. British Columbia's labour laws in this respect are simply out of step with other provinces, such as Alberta and Ontario. Many British Columbia businesses choose, for their own economic reasons, not to operate during a strike. This was true before the replacement worker ban came into effect and it will still be true when the ban is gone.

However, to force all businesses to shut down during a strike is too costly for many. Particularly in respect of small businesses, the economic consequences of a ban on strike replacement workers are crippling and virtually eliminate the businesses' choice about whether or not to endure a strike; they simply cannot do so.

In these circumstances, many small businesses must either shut down entirely or give in to union demands. The result is that the balance of power is tilted excessively towards the trade union, contrary to the intent of the strike and picketing provisions of the *Code*. The Coalition therefore recommends that small businesses be permitted to use replacement workers in order to correct the power imbalance that results from a union's threat of strike to a small employer.

Recommendation:

- The current ban on replacement workers represents a profound power imbalance between big unions and small businesses. The *Code* does not intend that a labour dispute should destroy a small business, and the ban on replacement workers should be eliminated, at least with respect to small business.

11. Free Speech Picketing

The BC government should enact a new definition of picketing to provide clarity in terms of what constitutes picketing and what type of labour activities will be included and exempted from the Board's regulation. For certainty, the definition should be enshrined in legislation.

"Picketing" is currently defined under the *Labour Relations Code* as:

> *Attending at or near a person's place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to:*
>
> *(a) enter that place of business, operations or employment,*
>
> *(b) deal in or handle that person's products, or*
>
> *(c) do business with that person,*
>
> *and a similar act at such a place that has an equivalent purpose;*

However, in the Kmart case, the Supreme Court of Canada struck down this definition of picketing as being overly broad because it encompassed consumer leafleting. Since then, no BC government has enacted a new definition, leaving it to the Board to develop a definition of picketing.

Employers are concerned that if the exception for leafleting is read too broadly, unions will be able to carry out activities traditionally thought of as "picketing" (such as the use of placards) at secondary sites. Accordingly, they seek a "bright line" distinction between picketing and leafleting that would preclude any activity other than small numbers of individuals handing out leaflets at secondary sites.

Leaving the *Code* as it stands—with no legally binding definition of picketing—would allow the Board to continue to determine the definition of picketing on a case-by-case basis. This is what is currently taking place; however, it does not provide the certainty the labour relations community is looking for.

Government needs to introduce a new definition of picketing into the *Code* to comply with the Kmart decision. One approach is to state that picketing excludes "consumer leafleting."

Recommendation:

- Enact a new definition of picketing to provide clarity in terms of what constitutes picketing and what type of labour activities will be included and exempted from the Board's regulation. One approach is to state that picketing excludes "consumer leafleting."

12. Union Raids

Currently in BC, a union can raid an incumbent union in the seventh and eighth month of each year of the current collective agreement. In many other jurisdictions, an incumbent union can be raided only at the end of the collective agreement term.

Raids are inherently disruptive to a workplace. The Coalition recommends that raids be limited to the last two months of a collective agreement term.

Recommendation:

- Union raids should be limited to the last two months of a collective agreement term.

13. Time Bar Orders after Decertification

If employees in a bargaining unit vote to decertify their union, the *Code* allows that decertified union to re-apply for certification at any time. By comparison, any other union seeking certification of that unit must wait ten months after the decertification, unless the Board exercises its discretion to permit an application to be brought in a shorter period.

The primary question is whether this asymmetrical treatment between the old decertified union and any new union seeking certification is justifiable and is the time bar itself appropriate?

The employer community believes the ten-month time bar should remain and should apply to all unions. The law, as it currently stands, allows the decertified union to immediately engage in a certification campaign. This favourable treatment toward the decertified union is absurd and ignores the objectives of the *Code*.

The reason for the ten-month time bar is to have a period of calm within the workplace, in which employees can assess whether they are satisfied with their choice to decertify, and for the workplace to recover from the disruption of the decertification process. These rationales apply equally to the union that has just been decertified as to any other union.

Whether a time bar is kept in the *Code* or eliminated, one thing is clear: the rule should apply equally to both the union just decertified and any new union seeking certification.

Recommendation:

- Impose a ten-month time bar on all unions from engaging in a certification campaign after a union has been decertified.