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CCPA-BC Submission to the 2024 BC Labour Relations Code Review

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Introduction

Thank you for the opportunity to share our recommendations for the Labour Relations Code Review. The CCPA-BC has a long track record producing research and policy recommendations on workers' rights with a view to a prosperous and just economy. Together with Simon Fraser University's Morgan Centre for Labour Research, the CCPA-BC is jointly leading a six-year research and public engagement initiative investigating precarious work and multi-dimensional precarity in British Columbia supported by the Social Science and Humanities Research Council of Canada (SSHRC). We hope our contribution will be useful to your deliberations.

The 2024 review of the Labour Relations Code, only the second in more than two decades, comes at a critical juncture for labour relations in British Columbia. It is imperative that this review bring a comprehensive package of reforms to markedly improve workers' abilities to meaningfully exercise their statutory rights to organize and engage in collective bargaining in the current context of fissured workplaces and increasingly insecure work arrangements in many sectors of the BC economy. Specifically, we recommend:

1. Enable the development of broader-based (also known as sectoral or multi-employer) bargaining frameworks in industries employing vulnerable workers.

2. Eliminate barriers to collective bargaining in the Labour Relations Code.
3. Increase the operational capacity of the Labour Relations Board.

Underlying our recommendations is the recognition of the inherent power imbalance in employer-employee relationships, which is magnified for employees who experience intersecting inequalities, including racialized workers, Indigenous peoples, women, lower-income individuals and workers with precarious legal status in Canada. These vulnerable groups of workers are also less likely to be unionized or covered by a collective agreement, especially in the private sector. It is no coincidence that these workers are much more likely to experience precarious or insecure employment relationships characterized by instability, low pay and a lack of access to benefits in the BC labour market, leading to negative impacts on their physical and mental health, all of which have consequences not only for workers but also for their families, their communities and our society.¹

Facilitating broader access to union representation is essential to correcting this power imbalance, which remains tilted in favour of employers, especially when those employers are large, often multinational corporations.

The 2018 Labour Relations Code review constituted a significant first step towards rectifying the substantive employer-favoured reforms from the 1980s to the early 2000s, which tilted the scales further away from worker protections. Several noteworthy improvements have been made to the Labour Relations Code since 2018 which have had positive impacts on workplace organizing, such as bolstered successorship rights in a few specific sectors, increased penalties for employer infractions and the re-introduction of single-step certification. We support the retention and enhancement of these measures to extend their benefits to a broader group of workers.

The rapid changes in work structures in recent years, such as the increased ‘flexibilization’ of work and the expansion of the platform economy, necessitates a re-evaluation of BC’s nearly exclusive reliance on the traditional (Wagner Act) model of union organizing in the private sector. It is paramount for the Labour Relations Code to adapt dynamically to changes in the organization of work to ensure that it continues to protect workers’ rights effectively.

It is time to expand the BC Labour Relations Code to enable broader-based bargaining structures, also known as sectoral bargaining, in particular in industries characterized by small individual worksites and powerful, often multinational, employers that hide

¹ See, for example Ivanova, I. and K. Strauss. 2023. *But is it a good job? Understanding employment precarity in BC*. CCPA-BC and SFU Morgan Centre for Labour Research. <https://policyalternatives.ca/publications/reports/it-good-job>.

behind layers of franchising and subcontracting, where the current model of worksite-based certification makes it impractical for workers to exercise their rights.

Without sectoral bargaining, hundreds of thousands of BC workers will continue to lack meaningful access to union coverage and entire sectors (like hospitality and janitorial services) will continue to be stuck in a race to the bottom that drives down wages and living standards for workers.

Economic context: the urgent need to expand access to collective bargaining

The Canadian labour relations model, based largely on the American Wagner Act, seeks to safeguard economic stability by protecting workers' rights to unionize and legally mandating employers to bargain in good faith with unions.

The ability of workers to come together and collectively bargain for better workplace conditions and higher wages is a key lever to balance the uneven scales of power between employers and workers, and make labour relations fairer. There is a large and compelling literature showing that higher union density is linked to lower income inequality between the highest- and lowest-income earners and reduced gender and racial pay inequities. CCPA research also finds that unionization and collective bargaining density explain why the pay gaps for women, Indigenous and racialized workers are significantly lower in the public sector than in the private sector in Canada. Collective agreements protect against unfair treatment, discrimination and arbitrary dismissal at work.²

Unions are an essential equalizing mechanism not only across workers, but between workers and employers.³ Unions are vital in increasing wages and bargaining power for middle- and low-income earners and collective bargaining helps to closer align wage increases with growth in productivity.⁴

Inequality in BC has increased over recent decades in lock step with diminishing union density. Too many workers in BC now lack union coverage, particularly in the private sector where only 15% of workers were covered by a collective agreement in 2023.

² McIntruff, Kate and Paul Tulloch. 2014. *Narrowing the Gap: The Difference that Public Sector Wages Make*. Ottawa: CCPA. <https://policyalternatives.ca/publications/reports/narrowing-gap>.

³ ILOSTAT. 2023. *Beyond the numbers: Exploring the relationship between collective bargaining coverage and inequality*. Geneva: ILO. <https://ilostat.ilo.org/beyond-the-numbers-exploring-the-relationship-between-collective-bargaining-coverage-and-inequality/>.

⁴ International Labour Organization. 2023. *Global Wage Report 2022-23: the impact of inflation and COVID-19 on wages and purchasing power*. Geneva: ILO. https://www.ilo.org/global/research/global-reports/WCMS_862569/.

Union coverage is even lower among women working in the private sector (a paltry 11% in 2023).⁵ Lower levels of unionization have diminished earnings and bargaining power for middle- and lower-income workers, consequently increasing the income share of corporate management and shareholders.⁶

BC’s traditional model of worksite-level union organizing is poorly suited to changing employment structures. BC’s evolving economy and workplace structures, influenced by automation, globalization and regulatory evasion, have outpaced the Labour Relations Code, leaving too many workers unprotected. For decades, we have experienced a shift towards so-called “flexible” business models that rely on subcontracted, part-time and temporary work, particularly in the growing service sectors, which has contributed to the increasing precarity of work and consequent weakening of workers’ collective power.

Since the last Code review, work structures have undergone even more significant transformations driven by technological advancements and external factors such as the global COVID-19 pandemic. The gig economy has drastically expanded, displacing more secure work in certain industries such as taxi drivers, couriers and some creative roles. Platforms like Uber, Skip the Dishes and various freelancing websites have spearheaded this shift towards the complete atomization of workers and the shirking of employer responsibilities.

Labour relations is an issue of workplace equity. This rise in precarious work has particularly affected women, racialized people and newcomers, exacerbating gendered and racialized income disparities and marginalization.

Our research finds that racialized women, Indigenous women and recent immigrants in BC are more likely to have non-standard employment, which correlates with lower earnings, fewer benefits and job insecurity.⁷ Statistics Canada data show that the prevalence of low income in BC is higher for Indigenous people (20% vs 13% compared to non-Indigenous people), racialized people (16% vs 12% for non-racialized people) and recent immigrants (16% vs 12% for non-immigrants). These disparities directly impact workers’ quality of life, including their ability to meet their families’ basic needs, with 31% of recent immigrants and 42% of non-permanent residents in unaffordable housing compared with 19% of non-immigrants and 28% of racialized people compared with 18% of white people. The impacts of low income and job precarity persist across generations.

⁵ Statistics Canada. Table 14-10-0070-01 Union coverage by industry, annual (x 1,000).

⁶ Osberg, Lars. 2021. *From Keynesian Consensus to Neo-Liberalism to the Green New Deal: 75 years of income inequality in Canada*. Ottawa: CCPA. <https://policyalternatives.ca/publications/reports/75-years-of-income-inequality-canada>.

⁷ Ivanova, I. and K. Strauss. 2023. *But is it a good job? Understanding employment precarity in BC*. CCPA-BC and SFU Morgan Centre for Labour Research. <https://policyalternatives.ca/publications/reports/it-good-job>.

It is time for new models of organizing in BC. The Wagner Act model of worksite-level organizing was tailored for the early 20th century industrial context dominated by large domestic firms that offered long-term employment to relatively homogenous groups of workers (primarily white men). This model is poorly suited to today's vastly different economic realities, which explains the low union coverage in many industries, including accommodation and food services, retail, janitorial and security services among others.

In the accommodation and food services sector, where women, racialized workers, immigrants and temporary foreign workers are overrepresented, only 4% of workers are covered by a collective agreement. Workers in this notoriously low-wage sector would greatly benefit from meaningful access to collective bargaining for better wages, job security, benefits and working conditions, but the current requirement for worksite-specific organizing presents virtually insurmountable hurdles given the fractured nature of this work and employers' union-busting practices. Workers at a single fast food location, for example, have little power when negotiating with multinational employers, and even if they succeed against the odds in obtaining union certification for their worksite, their employer can (and often does) close that particular location in response to the union drive.

For even more atomized workers, like app-based or domestic workers (such as nannies and live-in caregivers), the current model is next to impossible.

There is an urgent need for Labour Relations Code reforms to keep up with changing work arrangements to ensure everyone has access to their Charter-protected right to collective bargaining.

Solutions

1. Enable the development of sectoral bargaining frameworks

Given how much the dynamics and demographics of work in BC have changed, there is a pressing need to expand our labour relations frameworks to include sectoral bargaining in order to extend meaningful rights to collective bargaining to more workers.

In the current framework, private sector workers have to organize on a worksite-level basis. This approach is already time-consuming, expensive and vulnerable to employer union-busting tactics for workers in large workplaces and it's downright impractical for workers in small worksites (such as an individual location of a fast food chain, or the

cleaners of a single office building) and those in workplaces with a high proportion of non-standard jobs, including part-time, temporary, casual and atomized work.

The only way to extend meaningful access to collective bargaining to those workers is by enabling broader-based bargaining structures, also known as sectoral or multi-employer bargaining, under the BC Labour Relations Code.

While there are different models for sectoral bargaining, they all provide ways to bring together workers across an industry, occupation or geography to negotiate minimum standards across an entire sector. Sectoral bargaining is widespread internationally and forms of it exist in much of Europe, in Australia, in South Africa, in New Zealand and elsewhere. In BC, it is common in the broader public sector but it is not used in the private sector outside of movie and television production and construction.

Introducing sectoral bargaining not only has the potential to significantly increase the number of workers benefiting from higher wages and improved working conditions negotiated by unions but also plays a crucial role in fostering a more equitable and productive economy.

A large and compelling body of evidence shows that countries with more centralized bargaining systems like sectoral bargaining have higher collective agreement coverage rates and consequently enjoy better labour standards, including for vulnerable workers, higher levels of employment and lower income inequality between the highest and lowest earners.⁸ By fostering broader wage equity for similar roles, sectoral bargaining has been more impactful than workplace bargaining alone in terms of closing pay gaps related to gender, ethnicity and immigration status.

Sectoral bargaining has also been shown to contribute positively to economic productivity. By reducing the potential for competition on the basis of low wages and poor working conditions (resulting in a race to the bottom), sectoral bargaining encourages competition on the basis of productivity instead. The increased collective agreement coverage that comes with sectoral bargaining also improves low-income earners' spending power, which in turn stimulates the local economy.

Recommendations for sectoral bargaining have been put forward by experts in BC since the early 1990s. In the context of increasingly precarious employment practices, sectoral bargaining is more necessary than ever. Designed to complement, not replace, workplace-level bargaining, the sectoral approach would offer a meaningful pathway to unionization in sectors employing a large number of vulnerable workers. Sectoral bargaining can be particularly successful at extending the protective reach of collective

⁸ See, for example, ILO. 2017. *Trends in Collective Bargaining Coverage: Stability, Erosion or Decline?* INWORK Issue Brief No. 1. and OECD. 2019. *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*. <https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>.

bargaining to workers in smaller, franchised, or dispersed worksites as well as for workers in non-standard, part-time and contracted employment.

In 2018, the Labour Relations Code Review Panel recommended that sectoral bargaining be explored in a single-issue commission, but no such commission has been convened in the six years since. There is no justification for putting off this process any longer while BC's most marginalized workers' remain without feasible access to their collective bargaining rights.

2. Eliminate barriers to collective bargaining in the Labour Relations Code

While sectoral bargaining will contribute to higher union coverage than what can be achieved in a purely enterprise-based system, it represents a complement not a replacement for workplace-level organizing. As such, it is still important to enhance the protections available to workers exercising their rights to collective bargaining under the traditional workplace model of organizing.

We applaud the move to restore single-step certification. This has gone a long way to reduce unjust barriers to unionization and the number of successful certification drives has since increased. However, more needs to be done to remove the obstacles workers continue to face.

MODERNIZING ORGANIZING DRIVES

The flexibilization of work, the adoption of new technologies and the shift to hybrid and remote models in the wake of the COVID-19 pandemic have changed the way workers can communicate with one another. Workplaces are more fractured and employers more likely to have control over communication channels. This makes union drives more difficult than they ought to be. Requiring employers to provide employee lists during union drives would mitigate the challenges posed by these modern workplace transformations, ensuring continuity in workers' ability to organize effectively.

REACHING A FIRST AGREEMENT

After workers have achieved certification, employers can strategically prolong negotiations until the end of the freeze period to circumvent a first agreement. Despite improvements like extended freeze periods and pre-strike mediation options introduced by the BC government following the Panel's 2018 recommendations, employers can still make achieving a first agreement difficult by exploiting delays.

Removing time limits on freeze periods would encourage a timely process by removing the benefit of stalling tactics for employers.

PROTECTING THE COLLECTIVE AGREEMENT

Once workers have successfully secured a first agreement it is crucial to safeguard these collective agreements from employers' anti-union strategies. A key advancement from the 2018 Code review was broadening successorship rights for employees in building maintenance, security, bus transport, food service and healthcare services. This change has protected the continuity of collective agreements for many vulnerable workers during contract transitions, preserving their employment, wages and benefits. Successorship rights are essential for all workers and these protections should uniformly apply to workers in all sectors.

Workers need to be protected from other ways in which employers restructure their businesses to circumvent unionization. Employers should not be permitted to circumvent union certification by restructuring their corporate entities, such as by transferring assets from one corporation to another. Where corporate reorganization aims to undermine union certification, these entities should be recognized as one employer.

UPHOLDING WORKERS' COLLECTIVE POWER

Balanced labour relations must ensure that workers, who have inherently less bargaining power than employers, can fully utilize their collective organizing strength. The BC Labour Relations Code is an outlier in restricting picketing at secondary worksites, a constitutional right. This restriction negates workers' strike power by allowing employers to continue their normal business operations from elsewhere. The Labour Relations Code's language has also proven unclear in terms of protecting workers' right to refuse to cross picket lines when strikes cross jurisdictions. Impeding workers from engaging in these demonstrations of collective strength is counter to the purpose of the Labour Relations Code.

3. Increase the operational capacity of the Labour Relations Board

For the Labour Relations Code to be meaningful, it needs to be enforced. Unfortunately, the key enforcement bodies for provincial workplace rights, the Employment Standards Branch of the Ministry of Labour and the Labour Relations Board, have been underfunded to the point where they cannot adequately administer and enforce the law. This means that for too many workers in BC today, workplace rights exist only on paper and employers can disregard their legal responsibilities

without consequence. This undermines the fundamental purpose of the Labour Relations Code to establish balance between employer and employee interests.

As the volume of applications to the BC Labour Relations Board continues to increase, boosting its financial support is crucial for advancing workers' rights. Enhanced funding would enable the Board to increase staff at every level in order to cut down on lengthy wait times that leave vulnerable workers in limbo and allocate more resources towards the comprehensive oversight of employment standards. This is necessary to ensure faster resolutions to disputes and more rigorous enforcement of labour laws.

Conclusion

Precarious, part-time, temporary and low-wage jobs with limited benefits contribute to working poverty and impose high costs on society more broadly. The consequences are far reaching including chronic stress and health problems for workers to poorer school performance for their children and, fundamentally, lost human potential.

Too few private sector workers have meaningful access to the benefits of collective bargaining and our traditional model of union organizing one workplace at a time is a key culprit.

BC's Labour Relations Code has failed to keep up with the evolving nature of work and technology, which has hindered organizing efforts and left many particularly vulnerable workers without a path to collective bargaining. The recommendations outlined in this submission, including the adoption of broader-based (sectoral) bargaining frameworks, the removal of barriers to collective bargaining from the Labour Relations Code, and the enhancement of the Board's capacity will ensure the Labour Relations Code adapts to the realities of changing work environments and improve access to collective bargaining to hundreds of thousands of vulnerable workers, including women, racialized and Indigenous workers, migrant and low-wage workers.

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Understanding PRECARITY in BC

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