



CCPA
CANADIAN CENTRE
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BC Office

Strengthen the Labour Relations Code to Improve Fairness in a Changing Workplace

Presentation to the BC Labour Relations Code Review Panel

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Introduction

Thank you for this opportunity to share some of our CCPA-BC research and recommendations with your Review Panel. Workers' rights are an issue we have been engaged with for many years and we hope our contribution will be useful for your deliberations.

Since opening the CCPA-BC office 20 years ago, we have published a number of reports on the importance of protecting workplace rights, including both employment standards and the rights provided for under the Labour Relations Code. Our research shows that strengthening workplace rights is a key policy lever to reduce income inequality, improve quality of life for working families and reduce poverty among vulnerable workers, in particular, among low-wage immigrant and migrant workers and women.

In this submission, I will make the case that you should recommend an ambitious package of reforms to the Labour Relations Code to strengthen the rights of workers to organize and collectively bargain, and to reverse the erosion of workers' bargaining power we have witnessed in BC over the last three decades. Here is why.

Our economy and workplace structure are changing and the Labour Relations Code has not kept up, leaving workers unprotected.

Technology, globalization and automation are changing Canada's workplaces and BC is no exception. While most workers of my parents' generation could have reasonably expected to spend their entire careers in a permanent full-time job with one or two employers, younger workers today are increasingly faced with project-based or limited employment options. The very structure of what a job looks like is changing. Technology is redefining work by unbundling traditional jobs into smaller tasks, many of which can be performed by workers located anywhere in the world. As a result, we've seen the rise of project-based contract work and the so-called gig economy.

The changing nature of work has been accompanied by eroding employment security and "a slow but steady deterioration" in job quality as measured by the CIBC index of job quality.¹ Anecdotal evidence suggests that millennials are facing increasingly insecure work arrangements with few, if any, benefits, unpredictable hours of work and highly variable earnings.²

The CCPA-BC office has documented the increase in temporary employment (including contract, seasonal, casual and temp agency work) in our province over the last decade.³ Data from Statistics Canada's Labour Force Survey show that since the 2008 recession, temporary jobs have grown four and a half times faster than permanent jobs in BC. This is important because the median hourly wage for BC workers in temporary jobs in 2017 was \$17 per hour compared to a median hourly wage of \$24 per hour for workers in permanent jobs.

We have also written about the persistence of part-time employment. About 22% of all employees work part time. Although the share of part-time employees has remained steady since the recession, it remains the case that part-time workers earn considerably less than their counterparts in full-time positions. Two thirds of part-time employees are women and the median hourly wage for BC workers in part-time jobs in 2017 was \$15 per hour compared to a median hourly wage of \$25 per hour for workers in full-time jobs.

¹ Tal, Benjamin. 2016. "On the quality of Employment in Canada." *In Focus*, Nov. 28, 2016. https://economics.cibccm.com/economicsweb/cds?ID=1974&TYPE=EC_PDF

² See, for example, a recent article by Geoff Johnson in the *Times Colonist*, "'Precarious work' is reality for the young." Jan 16, 2018. <http://www.timescolonist.com/opinion/columnists/geoff-johnson-precariou-work-is-reality-for-the-young-1.23145197>

³ See Ivanova, Iglia. 2014. *BC Jobs Plan Reality Check: The First Two Years*. Vancouver: CCPA-BC. <https://www.policyalternatives.ca/publications/reports/bc-jobs-plan-reality-check-first-two-years> and Longhurst, Andrew. 2014. *Precarious: Temporary Agency Work in British Columbia*. Vancouver: CCPA-BC. <https://www.policyalternatives.ca/precariou>

Since most working-age British Columbians rely on employment earnings as their main source of income, changes in the labour market have significant implications for family incomes and well-being. The anecdotal evidence of workers finding it harder to make ends meet despite working harder is corroborated by a 2015 study documenting increasing rates of working poverty in Canada's big cities.⁴ Moreover, a lack of access to work-related benefits like pensions and extended health benefits can compound the challenges created by low pay and insecure work.

In a recent original data collection project, the Poverty and Employment Precarity in Southern Ontario (PEPSO) research team found that 40% of workers in the Greater Toronto and Hamilton areas are now working in jobs with some degree of precarity. The project also documented in detail the harmful impacts of precarious employment on the health and well-being of affected workers and their families and the costs that precarious work imposes on society more broadly.⁵

Recognizing the shifts in the labour market, the Ontario provincial government commissioned the Changing Workplaces Review in 2015 to consider what changes need to be made to existing provincial labour code and employment laws in order to better meet the needs of workers dealing with these labour market shifts. The Review was unique in Canada in that it was mandated to specifically address the challenges of precarious and vulnerable workers, in addition to the challenges faced by the workforce more generally, looking at both employment standards and the labour code. In other words, it was intended to holistically review the entire system of workplace rights in the province from the point of view of the workplace and inter-relationships that exist between unionized and non-unionized workplaces.

If you have not already seen it, I highly recommend watching the video of the presentation delivered last October at Simon Fraser University (SFU) by C. Michael Mitchell, one of the two Special Advisors to the Ontario Changing Workplaces Review who talked about lessons BC can draw from the experience of the Ontario Review. The video is available on the SFU Labour Studies website.⁶

In his speech, C. Michael Mitchell made a strong case for using the language of workplace rights to convey that all workers should have certain basic rights, regardless of where they work including:

⁴ Stapleton, John and Jasmine Kay. 2015. *The Working Poor in the Toronto Region: Mapping working poverty in Canada's richest city*. Metcalf Foundation.

⁵ PEPSO. 2015. *The Precarity Penalty: The Impact of Precarious Employment on Individuals, Households and Communities - And What to Do About It*. PEPSO, McMaster University and United Way Toronto.

⁶ <http://www.sfu.ca/labour/news-events/news-events-2017/the-ontario-changing-workplaces-review--lessons-for-b-c-.html>

1. The right to have a union if they so choose.
2. The right to a safe and healthy workplace.
3. The right to have certain basic terms and conditions apply to their employment such as the ones specified under the Employment Standards Act.

The Changing Workplaces Review resulted in the Ontario *Fair Workplaces, Better Jobs Act*, which was passed in November 2017. The *Act* significantly modernized workplace rights and improved protections for some of the most vulnerable workers in that province and was accompanied with a commitment from the Ontario government to step up enforcement of employment standards and its labour code.

The enforcement piece here is key. For laws to be meaningful, they need to be enforced. Unfortunately, for too many workers in BC today workplace rights exist only on paper. 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 tilts the playing field too far in favour of the employer. There is an inherent power imbalance in employer-employee relationships. To level the playing field, we need to proactively enforce all workplace rights.

This is why I urge your Review Panel to recommend increased funding for the Labour Relations Board and higher penalties for employers who break the law as was done in Ontario.

While it is likely that similarly high levels of precarity exist in the BC labour market as in Ontario, the issue of precarious employment has not been prominent in the public debate in our province, leaving BC workers unprotected.

Our previous government's go-to policy response to the changing nature of work—promoting skills-training and education with a particular focus on trades—was woefully insufficient. In addition to educational opportunities, workers need living wages, a strong collective voice, effective dispute-resolution mechanisms, health and retirement benefits, paid time off, and affordable, quality basic services such as housing, child care, transit and education.

The new provincial government has made welcome commitments to increase BC's minimum wage, if a little slower than what the CCPA recommended. However, to successfully tackle the thorny issues of employment insecurity and eroding job quality we need to do more to make the economy fairer for workers.

The recommendations for Labour Relations Code reforms outlined in the Ontario Changing Workplaces Review Final Report are an excellent starting point upon which BC's Labour Relations Code Review can build.

The role of unions in a modern economy

The ability of workers to come together and collectively bargain for better workplace conditions and higher wages is a key lever to make workplaces more fair. There is a large body of research documenting that unions support good jobs and strong communities.

Trade unions play a particularly vital role in increasing the wages and bargaining power of casual, temporary and low-wage workers. Those with union representation are much more likely to secure higher wages and benefits and less likely to have to juggle multiple jobs to make ends meet. Collective agreements also protect against arbitrary and unfair treatment at work, discrimination and unequal pay for the same work, and against unfair dismissal. Gender and racial pay inequities also tend to be reduced by unionization. For example, a CCPA report finds that unionization and collective bargaining explain why the pay gaps for women, Aboriginal and visible minority workers are lower in the public sector than in the private sector.⁷

A major study by the World Bank on the economic effects of unions concluded that “union density has a very weak association, or perhaps no association, with economic performance indicators such as the unemployment rate, inflation, the employment rate, real compensation growth, labor supply, adjustment speed to wage shocks, real wage flexibility, and labor and total factor productivity. There is, however, one significant exception: union density correlates negatively with labor earnings inequality.”⁸

A 2015 report by the International Monetary Fund similarly concluded that “the decline in unionization is strongly related to the rise of top income shares and less redistribution” in advanced economies, including Canada.⁹ The report argued that reduced levels of unionization weaken the earnings and bargaining power for middle- and lower-income workers and increase the share of income going to corporate management pay and shareholder returns.

⁷ McIntruff, Kate and Paul Tulloch. 2014. *Narrowing the Gap: The Difference that Public Sector Wages Make*. Ottawa: CCPA. <https://www.policyalternatives.ca/publications/reports/narrowing-gap>

⁸ Aidt, Toke and Zafiris Tzannatos. 2002. *Unions and Collective Bargaining: Economic Effects in a Global Environment*. Washington: World Bank.

⁹ Jaumotte, Florence and Carolina Osorio Buitron. 2015. *Inequality and Labour Market Institutions*. Staff Discussion Note, SDN/15/14. Washington: International Monetary Fund.

In our 2008 report *A Poverty Reduction Plan for BC*, which led to creation of the BC Poverty Reduction Coalition, we argued that: “To see improvements in the low-wage labour force, what is needed is more than specific policies to enhance the wages and benefits of low-wage workers; fundamentally, we need to alter the balance of power between workers and employers, such that workers can gain a larger share of provincial income. This requires that workers know their rights, feel empowered to exercise their rights, know they can challenge unfair or unjust working conditions, and trust they can rely on a decent social safety net if a transition between jobs is needed (including EI and social assistance)—and that more workers benefit from the collective strength that comes with unionization.”¹⁰

In addition, unions are a key force advocating for fundamental social reforms that benefit not only their members but all working families. These include such as universal health care, child care, old age pensions, paid time off, including for parental leave and sickness, and accessible training and education.

Union coverage has declined in BC, from 36.5% of employees in 1997 to 30% in 2014, a level at which it has remained for the last few years. Current trends are eroding workers’ bargaining power but that’s not inevitable. We can and should rebalance power.

To do so, the BC Labour Relations Code needs to be amended to remove barriers to union membership. Minimally, BC should follow Ontario’s lead and introduce card-based union certification within industries with a high share of precarious workers, including the temporary employment agency sector, building services, home care and community services and consider expanding card-based certification further. In addition, BC must consider creative approaches to provide more precarious, temporary and low-paid workers with a collective voice and union representation, including a European-style sectoral bargaining system where workers are able to collectively organize by industry (instead of workplace by workplace) to bargain with major employers together.

The traditional union organizing model was developed when large corporate employers had relatively few locations and must be adapted to the new realities of multiple small worksites whether they are independent small employers, locations of a single, often large, corporate chain or franchisees. Worksite-based certification makes it impractical to organize small sites, therefore, many vulnerable workers in smaller workplaces, including women, immigrants and workers of colour, don’t have meaningful access to collective bargaining.

The case for successorship rights in precarious sectors

¹⁰ Klein, Seth et al. 2008. *A Poverty Reduction Plan for BC*. Vancouver: CCPA-BC.
<https://www.policyalternatives.ca/publications/reports/poverty-reduction-plan-bc>

In BC, unions retain their bargaining rights after the sale of a previously unionized business, however, they lose bargaining rights after re-tendering of contracts or contracting out of services. This undermines the potential for improving wages and employment conditions in sectors where re-tendering is common such as food services, security, cleaning and other support services, and increases the precariousness of already vulnerable workers.

A particularly egregious case of the loss of bargaining rights after services were contracted out was the *Health and Social Services Delivery Improvement Act* (or Bill 29) introduced by the provincial government in 2002. The *Act* cancelled the existing union contract for hospital support workers and contracted out the work of more than 8,000 employees who did cleaning, food preparation, laundry and other hospital work. The vast majority of these workers were women, primarily immigrants and women of colour. Their wages dropped sharply overnight from about \$17.50 per hour to as little as \$10.00 per hour and many lost their jobs altogether.¹¹ This experience led to the creation of the Metro Vancouver Living Wage for Families Campaign.

After a five-year legal battle, the Supreme Court of Canada ruled that key parts of the bill violated the Charter of Rights and Freedoms and established that collective bargaining is a constitutional right protected by the Charter. Workers who lost their jobs because of Bill 29 received some financial compensation from the BC government although with the average payout being about \$9,500, this hardly made up for the income loss workers suffered.

The Ontario Changing Workplaces Review concluded that “in industries mostly populated by vulnerable and largely unskilled workers, the constant re-tendering of contracts is, in many cases...a mechanism to reduce costs by substituting a cheaper, non-union contractor for a unionized one. The social cost and impact of this “efficiency” is borne by those least able to bear it, namely, the vulnerable and precarious employees in that industry.”

The Ontario government followed the Review’s recommendation to make existing bargaining rights binding to the new “successor” employer after contracting out and re-tendering in the building services industry (including cleaning, food services and security). In addition, the Ontario government is now able to enact regulation to extend successorship rights to the retendering of publicly funded contracted services.

The BC Labour Relations Code Review Panel should similarly recommend extending successorship provisions to building services and other precarious sectors, including government-funded contracted services such as home and community care and health support services where constant re-tendering

¹¹ Cohen, Marjorie and Mary Cohen. 2004. *A Return to Wage Discrimination: Pay Equity Losses Through the Privatization of Health Care*. Vancouver: CCPA-BC. <https://www.policyalternatives.ca/publications/reports/return-wage-discrimination>

(or contract flipping) allows employers to keep wages low and negate improvements achieved through union representation for workers in predominantly female-dominated service jobs.

Conclusion

Precarious, 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.¹²

Making it harder to obtain union representation and easier to decertify unions in the name of assisting businesses cannot produce inclusive growth and is ultimately short-sighted. If we want to build a healthy, sustainable economy in BC we will need to level the playing field for labour relations and rebalance the power relationship between workers and employers, which has been tilted too far in favour of employers. To this end, we recommend the following:

1. Increase funding for the Labour Relations Board to ensure it can adequately administer and enforce the law.
2. Increase fines and penalties for employers who break the law.
3. Remove barriers to collective bargaining introduced in 2001 and protect workers' right to bargain collectively and to strike, especially in precarious sectors by re-instituting card-check union certification and enabling sectoral bargaining.
4. Introduce successorship rights for sectors employing vulnerable workers to prevent contract flipping from suppressing wages and eroding working conditions.

In her 2017 Rosenbluth lecture, Canadian economist Armine Yalnizyan argued that the future of work is largely a question of bargaining power: the future can be bright if we manage to reverse the erosion of workers' power we've witnessed over the last three decades and less so if we fail.

I urge you to recommend an ambitious package of reforms to the Labour Relations Code to strengthen the right of workers to collectively bargain, which is a key piece of this rebalancing that needs to happen.

¹² For more on the societal costs of poverty in BC, see: <https://www.policyalternatives.ca/costofpovertybc>