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SPECIAL FOCUS ON LABOUR AND EMPLOYMENT

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The Erosion of Employment Standards

By David Fairey

Workers' rights and economic security in British Columbia have changed dramatically in recent years. The provincial government has made substantive changes to nearly every aspect of employment standards law, its administration and enforcement.

In announcing the first round of legislative changes in May 2002, following a senior staff review and a quick 28-day public consultation process, then-Minister of Labour Graham Bruce explained that: "These changes are designed to provide flexibility and encourage self-reliance so employees and employers can build mutually beneficial workplace relationships."

"Flexibility" is key to the provincial government's overall labour strategy. Greater workforce flexibility, it is argued, will increase competitiveness and thus enhance job growth. Underlying this argument is the notion that if workers know they cannot demand too much of employers or expect too much support from governments, they will lower their expectations and wage demands and employers will hire more people.

The new "regulated flexibility" model adopted by the province corresponds closely to a broad range of business objectives for deregulation of the labour market.

First, exemptions and exclusions to employment standards have become the norm instead of the exception. The number of occupations excluded from some or all employment standards has increased, and the definitions of certain excluded occupations have been expanded.



Unionized workers, about 34% of BC's labour force, are now excluded from core provisions of the *Employment Standards Act*. They may now find themselves working under conditions that are below the minimum legal standards, and bargaining efforts may increasingly centre on winning minimum employment standards, rather than raising the bar for all workers. Unionized workers are now also excluded from the complaints, investigations, enforcement and appeals provisions of the *Act* in a number of areas.

In the agriculture sector, the definition of farmworker was expanded, and they are now excluded altogether from key protections such as hours of work, overtime and statutory holidays. A long list of other occupations ranging from foster care provider to oil and gas field worker has been added to the list of partially and totally excluded occupations.

Second, the minimum conditions of work have been lowered, the rules have been made more complicated, and more exceptions have been introduced. For example, complicated "overtime averaging" agreements between individual employees and

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From the Editor

In this issue of *BC Commentary* we take a closer look at the world of work in BC. Last Fall may be remembered for some highly visible labour disputes — the teachers' strike, and lockouts of Telus and CBC workers — but there have also been many not-so-visible changes to work in BC.

The *Economic Security Project*, led by the CCPA's BC Office and Simon Fraser University, has a research stream looking at changes in employment and labour standards, and their implications for vulnerable workers. David Fairey's article on employment standards reviews the sweeping changes that have been made since 2001.

A companion piece by Stephen McBride reviews the results of an original survey of young workers in the new world of work. This builds

on a *BC Commentary* article on child labour from our Spring/Summer 2004 issue.

We also set the stage for the coming negotiations on public sector wages. Stuart Murray's article reviews private sector trends as a baseline.

And I look at some soft spots in BC's economy: a lacklustre productivity performance and an alarming shift in income from workers to capital.

As always, your comments are most welcome.

Marc Lee
Editor

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their employers are now allowed. A person could end up working up to 84 hours in a single week without any overtime pay.

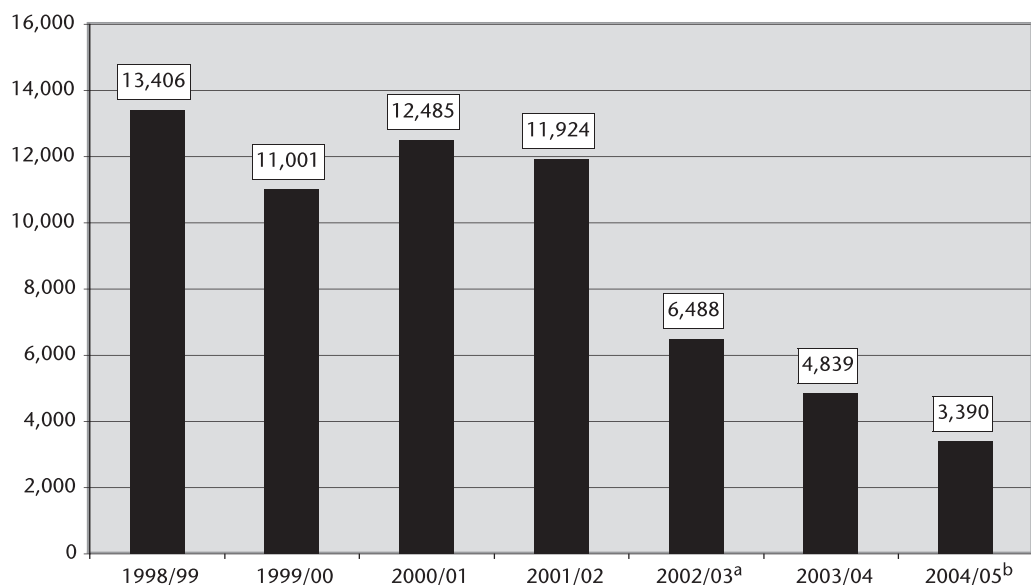
Other examples include the reduction of the minimum shift from four hours to two, and the introduction of a \$6 first job/entry level wage. To qualify for a statutory holiday with pay, an employee must now have worked at least 15 of the previous 30 calendar days.

Third, it is more difficult for workers to access information about their rights in the workplace

and to make complaints of violations. Employers are no longer required to post notices of employee rights under the *Act* in workplaces. Parents now shoulder the entire burden of assessing whether work arrangements for children as young as 12 are safe and appropriate (see accompanying article by Stephen McBride).

Perhaps the most troubling aspect of the changes to employment standards is the sweeping reductions and changes to the enforcement program in BC, which have had a serious and negative impact on the ability of workers to complain of violations of

Complaints received by the BC Employment Standards Branch 1998/99 to 2004/05



Notes: ^a Year of significant changes to the Employment Standards Act (Bills 48 & 37) and to regulations under the Act. ^b To December 2004 only.

Source: Constructed from BC Employment Standards Branch complaints data provided by Director on February 3, 2005.

their rights, and to obtain fair treatment in the process of pursuing complaints and having their complaints adequately investigated.

The Director of the Employment Standards Branch is no longer required to investigate every complaint received. Active investigation of complaints by Employment Standards Officers has been replaced with a new “mediation” process designed to obtain “settlement agreements.” Officers have been given new adjudication powers in the event that a settlement cannot be reached.

Employees who wish to report a violation of the *Act* must first confront their employer on their own using a complicated 16-page “Self-Help Kit” before being allowed to file a complaint with the Branch. This change alone may be preventing thousands of workers from demanding that their rights be respected.

According to data from the Ministry of Labour, the number of complaints of violations filed by workers with the Employment Standards Branch plummeted by 45% in 2002/03, the year when Bills 48 and 37 were proclaimed into law and the complaints process was made more restrictive. Between 2000/01 and 2003/04 (the most recent year for which full-year data was made available) the number of complaints dropped by 61%.

The dramatic decline in complaints cannot be explained by an overnight improvement in employer behaviour. Approximately two-thirds of all complaints that were received resulted in “determinations of violation” by the Branch (meaning a worker’s rights were found to have been violated).

The enforcement capacity of the Employment Standards Branch was gutted at the same time, meaning a smaller number of staff are now expected to protect a larger workforce. Between 2000/01 and 2004/05, the budget of the Employment Standards Branch was cut by 16%, one third of Branch staff was cut, and the number of branch offices around the province was reduced from 17 to 9.

These cuts have reduced, if not eliminated, proactive compliance investigation by Branch staff in large areas of the province, and the Branch is now almost exclusively operating in a rigid, office-based complaints processing mode.

What are Employment Standards?

Employment standards deal with issues such as the minimum wage, hours of work, overtime pay, parental leave and statutory holidays. They represent the minimum labour rights to which employees are entitled — a basic floor below which employers cannot go. These labour laws allow workers to better balance work and family, protect their personal time, and earn a decent living under reasonable conditions. Employment standards have been important even to unionized workers because they allow collective bargaining to concentrate on winning improvements above and beyond minimum standards.

While employment standards matter to all workers, they are particularly important for vulnerable workers — those who are least able to negotiate fair and decent working conditions with their employer and those not represented by unions. In effect, they act as a collective agreement that society negotiates on behalf of all workers, in recognition of the fact that the relationship between an employee and an employer is not an equal one.

Taken together, the changes have created an employment standards system that is less reliable, less transparent and less effective in providing a foundation of basic protections for workers. While some positive changes have been made (for example, employer fines for violations were increased), they are far outweighed in both number and significance by changes that undermine the ability of the employment standards system to provide meaningful protections to all workers.

In several areas, BC now has the dubious honor of having the lowest employment standards in Canada. These include: the exclusion of unionized workers from coverage by core provisions of the *Act*; a \$6 first job/entry level wage that is \$2 per hour lower than the standard BC minimum wage, and lower than the minimum wage in any other province; and deregulation of the employment of children aged 12 to 14.

The provincial government has stated that its goals included creating greater workforce “flexibility” and protecting “vulnerable” workers. However, the changes have instead increased vulnerability by limiting employment protections and decreasing the bargaining power of those workers least able to negotiate fair and decent working conditions.

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Perhaps the most troubling aspect of the changes to employment standards is the sweeping reductions and changes to the enforcement program.

Who's Up, Who's Down: Labour and Capital in BC

By Marc Lee

BC's economy at the end of 2005 is a paradox. On the surface, the economy is booming, with the best job market in a generation. But if we peer beneath the surface, there are some troubling findings: real wage growth has stagnated; the share of total income going to labour has declined substantially; and productivity, the holy grail of economic policy, has failed to grow at all.



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What does this mean? BC is experiencing a strong *cyclical* upturn in the business cycle, arising largely from low interest rates, strong international demand and high commodity prices. In forestry and energy, global forces are providing a good tailwind to the BC economy. And like other parts of North America, real estate and residential construction have been red hot.

But thus far, there has not been a *structural* improvement in BC's economic fortunes. Tax cuts and deregulation, both federal and provincial, have not worked their promised magic to boost investment and productivity.

The good news is a job performance not seen in decades. The unemployment rate averaged 5.9% in 2005 (year-to-date, as of November), with a monthly low of 4.9% in November. Total employment as a share of the population (a better indicator) has grown from 59.0% during the 2001 downturn to 61.7% this year. About half of the total increase in employment in 2004 and 2005 can be attributed to the residential construction sector.

Economically, a tight labour market should be synonymous with growing wages, due to greater competition among employers for a dwindling supply of workers. But average weekly wages in real terms *declined* 1.6% in 2004, after slight gains in 2002 and 2003. The outlook for 2005 is not much better, with nominal wage gains essentially offset by inflation.

For the economy as a whole, any income gains for workers were almost entirely due to increased hours of work. Total wages and salaries for British Columbians grew by 4.5% in 2004; total hours of work grew by 4.7%.

Perhaps more telling is the change in shares of total income going to labour (wages, salaries and commissions) and capital (profits). In just a few years, we have seen a spectacular transfer of income from workers to owners.

In 2004, total labour income amounted to exactly half (50.0%) of provincial GDP. To put this in perspective, in 2000 labour income was 53.2% of GDP, slightly below the historical average going back to 1961 (the first year covered by the BC economic accounts).

In fact, labour's share in 2004 was the lowest since the early 1960s. This decline is almost exactly offset by near-record profits. Pre-tax profits in BC jumped a whopping 39% in 2004, building on a 13% gain the year before.

As a percentage of GDP, corporate pre-tax profits in BC amounted to 11.1% in 2004. Going back to 1961, profits have exceeded this level only once, in 1979. Back in 2000, profits were 8.1% of GDP, slightly higher than the historical average.

This shift is a major departure from historical norms. And this is before accounting for the corporate tax cuts in recent years. Federally and provincially, business lobbies have successfully pressed for reductions in corporate income and capital taxes, in personal income taxes paid by those with the highest incomes (the top marginal tax rate), and in taxes on investment-related gains, such as income from dividends or capital gains.

The stated reason for these tax cuts is to promote a better business climate that will enhance new investment and spur productivity and competitiveness. Business has also pushed for deregulation as a means of reducing costs, with similar arguments about economic benefits.

All of this might not be such a bad thing if businesses were using their swelling profits to re-invest in the BC economy. It is new investment that drives productivity growth. Productivity is the total income pie generated per hour of work. Rising productivity over time is thus strongly correlated to increases in standards of living.

BC workers could be excused for thinking that productivity talk is just the blame game: a bid to make them work harder for the same pay. Rather, productivity is the opposite: new investment by businesses in new machinery and equipment that, in turn, makes workers more productive.

Productivity growth does not automatically translate into higher wages. These gains are often made at the bargaining table or in the context of labour supply shortages. But it is hard for real wages to increase if productivity is not also increasing.

According to a productivity database maintained by the Centre for the Study of Living Standards, in 2004 BC generated about \$36 for every hour of work put in, an amount essentially unchanged since 2002 after we take into account inflation, and up only slightly from 2001.

Another view is from the provincial statistics agency, BC Stats. By their count, the data show a *downward* trend in productivity over this timeframe.

With high pre-tax profits combined with corporate tax cuts, low interest rates and a stronger Canadian dollar (which makes imported equipment relatively cheaper), there has never been a better time for a resurgence of investment.

Outside of the residential construction sector, however, BC's investment performance has been weak. Investment in new housing is not a bad thing: it creates jobs and new homes. But it does little to boost our productivity.

When it comes to productivity, we are more interested in new business investment in structures, and in machinery and equipment. On these fronts the story is not so rosy. Business investment in non-residential structures was down 4.4% in 2004.

There may be some cause for optimism due to a marked improvement in new investment in machinery and equipment, up 18% in 2004. This new investment is concentrated in resource industries, responding to strong global demand and accelerated harvests of beetle-attacked wood. Nonetheless, this gain only offsets declines in investment in previous years: at 6% of GDP in 2004, non-residential investment is still below levels over the 1998 to 2001 period.

Now is a good time to revisit issues of productivity, investment and the distribution of income. In the midst of a strong cyclical expansion, provincial coffers are overflowing. Some of that money should find its way into a more creative investment and industrial strategy.

A made-in-BC strategy has to be multifaceted, with an emphasis on moving BC up the value chain and promoting investment in key sectors. This includes tax policies that reward new investment, rather than giving across-the-board corporate tax cuts. It means strong public investments, as well as making pools of capital available to those willing to make risky new investments. And it should encourage the diffusion of new technologies, so that BC is adopting the best practices from around the world.

In the meantime, British Columbians have good reason to be skeptical about new productivity agendas that rely on further tax cuts and deregulation.

Marc Lee is the CCPA-BC's Economist and Editor of BC Commentary. He receives no dividend income whatsoever.

BC is experiencing a strong cyclical upturn in the business cycle, but thus far, there has not been a structural improvement in BC's economic fortunes.

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Paying Our Public Servants: The New Bargaining Mandate

By Stuart Murray

The season of public sector bargaining is upon us. While the teachers' strike is over, bargaining now starts in earnest for the vast majority of public sector workers, leaving British Columbians to wonder if there are more labour disruptions to come.



In future, the government needs to respect the collective bargaining process, instead of bypassing it by legislative writ.

The answer will, of course, depend on the negotiating positions of both public sector unions and the provincial government, and the ability of both parties to reach agreement on what are fair and practical pay increases.

In recent years, the province has taken a confrontational approach to public sector negotiations. When the 2002 budget was released, the government announced wage guidelines of 0% for three years. Claiming that public employees were already well paid, then-Finance Minister Gary Collins said he saw no reason to increase their salaries.

This is a strange assertion, given the provincial government's stated desire to mirror the private sector's ways of doing business. When it comes to wage increases, there are well-established norms of behavior in the private sector, and indeed among all major employers.

Private sector employers are reluctant to spend more on pay increases than is the norm in the broader labour market. However, they also know they cannot spend too little without risking higher employee turnover. High turnover can increase staffing and training costs, and can cause operational disruption, lost productivity, and low morale.

In addition, private sector employers with unionized workforces do not have the option of foreclosing on collective bargaining through legislation, something the provincial government has done repeatedly in recent years. As a result, private sector employers assume that the only collective agreement they will achieve is one negotiated through bargaining, knowing that if their offers are unreasonable they face the threat of a strike.

Major employers tend to have formal compensation systems that closely track wage trends. They pay close attention to the reports of human resources consulting firms (such as Hay and Mercer) that regularly survey major employers to determine the market rate for pay increases. These consulting firms recently released surveys that predict national 2006 pay increases of about 3.3%. This is similar to past years, when pay increases among major employers have averaged about 3.3%. Over the three-year period of provincial public sector wage freezes, employees at other major employers have received nominal increases close to 10%.

The numbers are a little different when we look at unionized workplaces only. From 2002-2005 inclusive, public sector employees in British Columbia saw their wages increase by a total of 2.2% (a figure that includes municipal employees and others not affected by the wage freeze). During that time unionized employees in the BC private sector achieved increases of 7.2%, and the public sector across Canada achieved increases of 9.8%.

Finance Minister Taylor, to her credit, has acknowledged the need for public sector pay increases in light of an anticipated budget surplus close to \$3 billion in 2005/06, and projected surpluses of \$1.2 billion for 2006/07, and \$1.3 billion for 2007/08. Given the conservative assumptions in the budget, the final numbers are likely to be even higher.

To put these numbers in context, a 1% increase in compensation for provincial public sector workers is estimated to cost \$160 million per year. A 2% increase in base pay would cost approximately \$320 million; and a 3% increase in base pay would cost approximately \$480 million.

Children in the World of Work

By Stephen McBride

In 2003, the provincial government made dramatic changes to BC's child labour rules, relaxing the laws and regulations that govern the hiring of children as young as 12. The move provoked concern among parents and educators, who worried that children's safety, and their freedom to learn and develop, would be put at risk.



Before the changes, no employer was allowed to hire a child under 15 without first getting a permit from the Employment Standards Branch. The need for a permit gave the branch the opportunity to investigate the workplace, decide if restrictions on the type and hours of work were needed, and receive parental and school consent.

Under the new system, all that is needed to hire a child aged 12-14 is the written permission of one parent. The child is required to be directly supervised by an adult at all times. The regulations do not restrict potentially hazardous activities (such as selling door-to-door or operating a deep fryer). And they do not require that safe transportation be provided to and from work.

To find out if and how these new rules are working, and to get a picture of youth employment in general, a CCPA research team conducted a survey of public school students aged 12 to 18 about their work experiences.

The results show that for many young people, having a job is a positive experience. Students currently working reported varied types of employment. Service industry jobs, such as working in restaurants and retail shops, were the most common.

But the survey results also reveal some disturbing violations of the rules, particularly for children. The *Employment Standards Act* (ESA) sets out the conditions that employers must follow when hiring children and youth. However, student responses indicate these are often ignored.

Almost one-quarter (23%) of respondents reported that they worked less than two hours during the school week. Only a few of these were in excluded jobs such as newspaper delivery. Since the minimum

call-out time under the *Employment Standards Act* (section 34) is two hours, such a work pattern for the remainder constitutes a violation.

The ESA requires constant adult supervision of 12 to 14 year old child workers who are in occupations covered by the Act. But only 9% of those workers reported that they were supervised by an adult all of the time.

It is of paramount importance that children and youth work in safe and healthy environments. However, more than one in five working children and youth reported that they have been injured on the job, most often burned. A third of those were injured seriously enough to need treatment at a hospital, clinic or doctor's office. Many (30%) reported feeling unsafe at work. This includes a number of youth aged 12 to 14 years.

Employers are sometimes in violation of the ESA and many parents did not fulfill their responsibilities under the ESA's self-regulation model. Nearly half (48%) of 12 to 14 year olds reported that their parents had not evaluated the health and safety of the workplace.

There is little doubt that the vast majority of parents would never knowingly put their child in harm's way. But most parents are not experts in workplace health and safety. They no longer have the benefit of the knowledge and resources that were available under the old system, when the Employment Standards Branch actually had to decide if a potential job was appropriate.

A fact sheet on the Ministry website states that parents are responsible for all decisions about their child's employment — but there are no details,

The employment of children and youth requires special rules to make sure their education and overall development are not harmed as a result of participating in the world of work.

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Paying our Public Servants: The New Bargaining Mandate

In future, the government needs to respect the collective bargaining process, instead of bypassing it by legislative writ. Such behaviour was strongly condemned in 2003 by the International Labour Organization (ILO) as violating principles of freedom of association. Effectively, this is a reprimand from an international human rights body for our failure to protect fundamental democratic rights.

The government is early in its new mandate, and can still choose a path that is based on fair and reasonable practices that are consistent with and respond to labour market trends, strengthen human rights, and ensure sound management practices. Otherwise, we run the risk of becoming a society that is both short on human rights and beset by recruitment and retention problems and poor morale in the public service.

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Children in the World of Work

guidelines or suggested resources on how parents are supposed to fulfill their responsibilities. A phone call to the Employment Standards Branch requesting information about what kinds of questions a parent should ask a potential employer of a child under 15 elicited the response that "We don't provide anything like that whatsoever."

Some parents also may not be in a position to insist on safe working conditions for their children, either because of desperate economic circumstances, a shared employer, language barriers, or lack of knowledge about minimum employment standards in general. Indeed, a majority of 12 to 14 year olds with jobs reported that their employer did not receive written approval from their parents.

The provincial government's rationale for changing BC's child labour rules was that the old permit system was not effective. But these results tell us that the new "self-regulation" model is not working, and may be leaving children vulnerable to unsafe working conditions and serious injury.

It has long been recognized that the employment of children and youth requires special rules to make sure their education and overall development are not harmed as a result of participating in the world of work. It is this very idea that underlies the International Labour Organization's Minimum Age Convention. It states that the minimum work age should not be less than 15 years.

Our survey also asked youth about their pay. 44% of the employed youth indicated they had been paid less than the regular minimum wage of \$8 per hour. More than half (52%) of all students found the "first job/ entry level wage" (as low as \$6 per hour) to be unfair; among those who worked the percentage was higher.

More telling is that almost one third (31%) of working students reported that they had not received any training while on the job entry wage, and a further 29% reported they had been trained only at the start (only 8% reported that they had been trained "many times"). While provision of training is not legally required, if training were necessary that might provide some justification for paying a reduced wage. In practice, there is clearly little need for any training in most of the jobs that students obtain, and hence that justification is largely absent.

We hope these results will prompt the government to reconsider its approach, and go back to the drawing board. The risks of continuing with the current system are simply too great.

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