Who's Looking Out for Our Kids?

Deregulating Child Labour Law in British Columbia

A CCPA-BC Policy Brief

by Helesia Luke
and Graeme Moore

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CANADIAN CENTRE FOR POLICY ALTERNATIVES – BC OFFICE

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Summary

IN DECEMBER 2003, THE BRITISH COLUMBIA GOVERNMENT amended the *Employment Standards Act*, dramatically changing government's role in overseeing the employment of children. The amendments contained in Bill 37 end over 50 years of direct government oversight in setting the conditions and restrictions on employing children between the ages of 12 and 14. With Bill 37, government has normalized the youngest work start age in North America. Far too little public attention has been paid to the changes.

The BC government's new direction away from proactive child protection is reflected in the new title given to the relevant section of the *Employment Standards Act*. "No hiring of children under 15 without director's permission" has been changed to "Hiring children." Bill 37 removes a cautionary tone and, therefore, a cautionary environment for child employment in BC. These changes may prove disastrous to both the well being of children and the overall health of the economy.

Under the previous child labour permit system, before employing a child under the age of 15, an employer was required to obtain a permit from the Director of Employment Standards and consent from the child's parents and school authorities. The new law now allows children under 15 to work with only the consent of one parent or guardian. Even in cases of joint custody or guardianship, only one parent's consent is required. In addition, this new self-regulating system ends the long-standing roles of the Director of Employment Standards as well as educators as protectors of children's interests. Government approval is now unnecessary and there is no requirement to inform government of a child's employment. It is the responsibility of the employer to produce a letter of parental consent in the event of a complaint.

This paper is an analysis of the changes to BC's child employment laws. It warns of the harms that may result from Bill 37, the weaknesses in the new regime and the various ways in which BC's deregulation of child employment diverges from the norm in other jurisdictions as well as in international law.

Among this paper's key findings are the following:

- The government asserts that new regulations written to accompany the amendments to *the Act*, provide adequate protection for children in the work force. The new regulations, however, fall far short of the previous conditions for obtaining a work permit. The regulations provide no assurances that children will not be more vulnerable to inappropriate work sites, unsuitable or lengthy work hours, increased risk of injury, higher incidence of school drop-out and economic exploitation.
- Under the previous system, the Director of Employment Standards could impose conditions related to appropriate tasks, hours of work, and even

transportation to and from the work site. The new regulations, in contrast, do not include any prohibited occupations or activities (e.g. using power tools or selling door-to-door), nor do they place restrictions on the time of day a child can work.

- The new regulations allow children to be employed for up to four hours on a school day to a maximum of 20 hours per week. Given that young people are already in school for 30 hours a week, this would mean a 50-hour work week, not including time for homework. This far exceeds the work week for most adults. During non–school periods, children can work up to 35 hours per week—full-time by adult standards. The new work time allowances leave inadequate time for study, extra-curricular activities, play and socializing—all important childhood activities.
- In contrast to the previous system, the new self-regulated system is complaint driven, informing government officials only after the fact about exploitation and injuries. This represents a fundamental shift away from exposing unsafe working conditions ahead of time.
- The new system has eliminated the opportunity for the Employment Standards Branch to check with school officials before granting a permit. The former system provided a chance for school administrators to ensure that a child was keeping up with their studies before a work permit was granted.
- The temptation for children to work at a younger age and for longer hours at low-skilled jobs may prove too much for many low-income families in BC. Normalizing an earlier work entry age may also erode opportunities for further education and higher skilled, better paying jobs in the future. Parents struggling with poverty and unemployment may feel they cannot refuse to give permission for a child to work, as the family needs the additional income. Consideration about whether employment is in the best interest of the child takes a backseat to the family's immediate financial pressures.
- Contrary to initial government claims, under the old system child work permits were routinely turned down due to safety concerns, or granted only after employers and/or parents had agreed to certain conditions.
- The government's rationale for dismantling the permit system is seriously flawed. The Minister of Skills Development and Labour repeatedly stated that businesses were not obtaining child employment permits anyway, in violation of the old law. This, he concluded, was a good reason to get rid of the permitting system. By extending the minister's logic one would conclude that removing stop signs is the solution for motorists who do not stop. Removing laws to accommodate those who break them is a specious approach to governing a province.
- Reducing both the size of government ministries and the number of government regulations is a clearly stated objective of current provincial policymakers. Conveniently, getting rid of the child labour permit system and parallel enforcement procedures is likely to result in a staff reduction at the Employment Standards Branch and the elimination of administrative expenses related to investigating applications and processing permits.
- BC's deregulation of child labour certainly contravenes the spirit, and may contravene the letter, of a number of international treaties to which Canada and BC are signatories. International organizations, including the United Nations and the International Labour Organization (ILO), have approved international standards that oblige signatory nations (including those in the developed world) to create proactive legislation and regulations. Signatories are compelled to provide adequate enforcement mechanisms to protect children. BC's reduction of child labour standards is, therefore, clearly in conflict with the wealth of historic and international knowledge about why children and youth need protection in the workforce.
- These same international organizations have provided clear guidance to countries about legislative and regulatory language aimed at creating a cautious environment that prioritizes the rights of children above business interests. The NAFTA Side Agreement on Labour (an addendum to the North American Free Trade Agreement) was designed to prevent Canada, the United States and Mexico from engaging in a 'race to the bottom' in pursuit of competitive economic advantage at the expense of employees. Among other things, the three countries agreed to maintain the standards of their respective domestic employment laws. The agreement specifically mentions upholding current restrictions on "labour by children and young people."

- BC's new child labour laws are below the standards set in neighbouring jurisdictions. BC has now moved to a position of having among the lowest child labour standards in North America.
- The BC government is transferring the role of assessment and supervision of BC's employers to parents. The assumption that parents are able to act as a stand-in for the Employment Standards Director is a misguided move that may result in exploitation by unscrupulous or uneducated employers. While most parents do everything in their power to protect their children, society recognizes that not all parents act in the best interests of their children. Sometimes because of greed, but more often because of need, parents are not willing or able to make decisions in the best interests of their children. It is because of these situations that strong government supervision and regulation is needed.
- Regardless of its specific shortcomings, the former permit system demonstrated a societal understanding that child labour should be strictly limited, that it should not interfere with schooling, and that children have the right to time for play and relaxation. Children are not little workers.

Introduction

CASUAL FIRST EMPLOYMENT EXPERIENCES like babysitting and newspaper delivery, not traditionally regulated by law, create fond memories for adults. The reality of child employment in British Columbia today, however, involves children working long hours in retail, on construction sites, as farm workers and in many other occupations most people would consider adult work.

Bill 37, *Skills Development and Labour Statutes Amendment Act,*[1] fundamentally changes government's role in controlling the employment of children in BC. It ends a decades-old system that required employers, including parent employers, who hire children younger than 15 to apply to the Employment Standards Branch for a child employment permit.

Under this permitting system, the Director of Employment Standards, school authorities and the child's parents had to agree that a particular employment opportunity was in the child's best interests before a permit would be issued.

Now the government only requires that employers obtain parental permission. One parent's written consent is deemed sufficient to employ a child, regardless of the view of the other parent. Proof of parental consent is not filed with the government. Instead, the child's employer must demonstrate, if challenged, that parental consent was obtained. Only if a complaint is made to the Director of Employment Standards will an employer be required to provide evidence of parental consent. The Director of Employment Standards no longer has a role in assessing the suitability of work conditions prior to employment. The director can only intervene after a complaint is made. The Minister of Skills Development and Labour has not indicated that the government has any intention of developing a child-friendly complaint process.

Under the old system, any deviation by the employer from the conditions set out in the permit constituted a violation. When parental consent is the only "permit" required, it is not clear whether the parent can set conditions or whether employers are compelled to adhere to those conditions. Generally, employee complaints for children over the age of 12 will be governed by the adult-oriented *Employment Standards Act*. This act has been subjected to other changes recently in order to provide employers with more flexibility. These changes include: implementing an onerous, multi-page, self-help kit for employee complaints; removing the requirement to post rules in the workplace; provisions for extending work hours in the agriculture sector; lower minimum call times (from four to two hours) and the $6 per hour "training" wage ($2 less than the standard minimum wage).

An employment relationship, even for adults, is by nature unbalanced; employers hold a stronger position. The new regulations appear to assume that children as young as 12 years old will be aware of and able to

The Director of Employment Standards no longer has a role in assessing the suitability of work conditions prior to employment.

articulate their own best interests, including safety considerations, in today's fast-paced workplace. The regulations do not adequately direct employers to ensure that children and youth are protected from performing work that is inappropriate for their age, strength, skills and abilities.

Critics of Bill 37 are not against children working. In fact, recent studies indicate that limited hours of age-appropriate work can improve adolescent self-esteem and academic outcomes. Critics have expressed concern, however, that age 12 is too young to start adult work, a view that is backed up by a wealth of international knowledge, Workers Compensation Board (WCB) data and Canadian studies linking excessive work to school drop-out.

The transfer of responsibility from government to individuals has reached almost zealous proportions in BC. Bill 37 transfers child labour oversight from government to parents. The Minister of Skills Development and Labour contends that parents are in the best position to decide about employment on behalf of their child. This position assumes that all parents have expert knowledge of employment standards and can ensure their child's employment is developmentally appropriate, not detrimental to their education, safety or physical and mental well-being, *and* can define and enforce the terms of employment. It also assumes that parents and children always share the same interest and that parents have the same authority over employers as does the Director of Employment Standards.

This self-regulated system does away with workplace inspections by employment standards officers who would monitor a child at work to ensure employers are respecting any restrictions imposed by parents.

The new regulations state only that children must be "under the direct, immediate supervision of an adult in the workplace at all times." There is no benchmark by which to judge whether that adult is trained in the supervision of children or has a thorough grasp of tasks that are appropriate to the child's development or ability.

Many employers do not appreciate the physical and intellectual limits to a child's ability to perform certain tasks. For example, working with adult-sized equipment and performing repetitive tasks that require sustained strength are usually inappropriate for children.

Luke MacIver

15-year-old Luke MacIver made headlines in 1995 as the youngest person in British Columbia to ever die in an industrial accident. Luke was only five days into his summer job when he was killed, buried under a mountain of garbage in a waste compacting facility in Coquitlam. Luke's father also worked at the same site.

Luke's father did not have a peer relationship with his son's employer. The employer, because Luke was 15, did not need a child employment permit, but did have a parent's permission. Although this accident occurred before the new regulations were in place, it did occur under exactly the same conditions government now proposes; conditions it insists will better protect children.[2]

The Government's Rationale

DISMANTLING THE CHILD EMPLOYMENT PERMIT PROCESS was not a *New Era* pledge made by the Liberals in the 2001 general election campaign. Bill 37 raises the question: what is driving this change?

The Minister of Skills Development and Labour has given several reasons. The former permit system, he says, was '"very bureaucratic"[3] and in the absence of adequate enforcement, gave a false sense of security. It also delayed when children started to work and earn wages. The minister correctly observed that many children were already employed in BC without permits. The permit process, in his analysis, was not working and, therefore, was not needed. The answer is for parents to take responsibility for their child's employment, according to the government.[4]

Spokespeople for the Ministry of Skills Development and Labour have stated that they did not track employer compliance with child employment permits. The failure to record and track data is offered as further proof that the previous process was ineffective.

While the ministry has stated that it did not keep track of rejected, withdrawn or revised permit applications, ex-branch employees tell a different story. These former employees insist there were significant numbers of applications issued only after the Director of Employment Standards imposed conditions on employment.

Moreover, after initially indicating that they were unaware of any child permit application being rejected under the former system, the ministry later admitted that some applications were rejected. After some prodding, the ministry finally pegged rejected applications at three percent (a statistic that contradicts initial statements that government had no record of rejected applications). This rejection rate highlights the important fact that, for various reasons, the former permit system resulted in requests for child employment being frequently turned down.

The Employment Standards Branch did in fact record the disposition of applications.[5] The branch's 'DIS' form, completed when a file is closed, has a place to record the disposition of an application for a child employment permit. Every decision made about a permit application by the branch was subject to appeal. An employer or parent had the right to appeal a rejected permit application to the Employment Standards Tribunal. It is unclear why the branch cannot provide basic information including the number of applications received and the numbers approved or not approved. The government had insisted

on an internal account of branch staff activities and corresponding resources, including person-hours spent on processing applications, so it is unlikely that data related to child employment permits would be difficult to extract.

In 1994, UBC industrial relations professor Mark Thompson, on behalf of the Minister of Labour, inquired into employment standards in BC. The Thompson Report[6] recommended further consultation regarding labour policies for child performers (children working in the entertainment industry) but did not recommend additional changes to other child labour laws or practices. In fact, his report states: "*...the present policies of the Ministry seem adequate to guard against most abuses, although some modifications may be appropriate.*"

In the absence of credible historical data it is impossible to gauge the extent to which the previous permit system was effective in deterring employers from hiring children for inappropriate employment. Anecdotal accounts, however, offer some insight about specific instances where large employers took a cautious approach when hiring young workers.

In the 1990s, for example, a large fast food restaurant chain approached the Employment Standards Branch with the goal of obtaining permission to employ children under the age of 15 at its restaurants across the province. After reviewing the permit process and the safety conditions that would be imposed on its operations, the chain's management decided against hiring children and directed local managers to only hire those over 15.

The BC government's stated political goals are to reduce both the number of government employees and 'red tape' by thirty percent. Cabinet Ministers receive financial bonuses for meeting these targets. Substituting parental approval for government permission fulfills both goals.

However, in this instance, the government has not assured that it is in compliance with its own criteria for deregulation. By eliminating the direct role government has had in regulating child employment, children are certain to be adversely effected–a situation the government's own regulatory criteria cautions ministries to avoid.[7]

The new regulations appear to assume that children as young as 12 years old will be aware of and able to articulate their own best interests, including safety considerations, in today's fast-paced workplace. The regulations do not adequately direct employers to ensure that children and youth are protected from performing work that is inappropriate or their age, strength, skills and abilities.

Child Employment Permit Process:
How the Former System Worked

THE FORMER PERMITTING PROCESS allowed the Director of Employment Standards to set conditions for the employment of children. Industrial relations officers used the Employment Standards Branch Interpretation Guidelines Manual to determine the suitability of child employment permit applications. Among other things, this internal document required officers to conduct pre-employment workplace inspections and employer interviews to ensure that appropriate safety measures were in place.

The Guidelines Manual instructed officers to require that employers provide the child with immediate adult supervision. In addition, guidelines authorized officers to impose specific conditions related to hours of work, transportation (to and from the workplace), type of work and location and provisions for tutoring (for child performers in the entertainment industry). Officers confirmed that both parents and the appropriate school authorities consented to the child's employment. Parental and school consent, however, did not in and of itself constitute permission. Officers had the responsibility to ensure that the child's best interests were protected and that safety and educational considerations were prioritized. They had the right to impose conditions or to reject the application. That right was subject to appeal.

On many occasions before a child employment permit was issued, the employer or the parent had to accept conditions imposed by the officer. Many applications were declined outright.

In a 2001 Employment Standards Bulletin[8], officers were directed to obtain a guarantee of adult supervision from any potential employer of children. The bulletin defined adult supervision to be direct and immediate "within sight and sound." In addition, the bulletin instructed officers to "err on the side of caution." A long list of tasks were prohibited including, but not limited to: operating a forklift; using a power saw or power tools that fire projectiles including air hammers; working above the second floor of a construction site regardless of safety provisions; working with chemicals: and working at or

Child vendors in Stanley Park

In the early 1990s a Vancouver Park Board concession stand operator applied to the branch for permission to hire children between 12 and 15 to work as ice cream vendors along the Stanley Park Seawall. The officer observed that the job would put children at risk. Working alone, at changing locations, with both goods and money, the children would likely be targets for theft. The application was declined.

near grills or deep fryers. In addition, with respect to the employment of children at construction sites, Officers were instructed to confirm there were no WCB orders that might raise concerns for a child's safety.

Under the previous system, a child's transportation to and from work was also scrutinized. Officers decided whether or not the proposed travel arrangements were safe: was the child riding a bicycle on a busy highway, for example, or making many transfers while taking the bus alone, especially after dusk? Failure to comply with the terms set out in the child employment permit meant the permit was void.

These directives, although only barely adequate when compared to regulations in other Canadian jurisdictions or the United States' federal jurisdiction, at least provided for the direct involvement of a third party (government) in the employment of children.

Officers were encouraged to take a balanced approach, one that would allow a child to work if it was ensured that their work and workplace could be safe. Officers worked with employers to resolve barriers to a child's employment without causing the employer or the child's parents undue financial or other costs.

For example, the Employment Standards Branch worked with an employer who it was discovered employed children to distribute materials door-to-door without child employment permits and without adequate adult supervision. Instead of fining the employer and closing down the business, the branch worked with the employer to bring its business practices into compliance with *the Act*: routes were redesigned in order to eliminate the child needing to cross busy streets, deliveries were rescheduled to early evening and adult supervision was improved. The director varied the minimum daily pay provisions and modified the child employment permit process to make the operation both financially and administratively feasible. It was not a case of pass or fail – officers educated the employer about the appropriate conditions for child employment.

The government also contends that the permit system resulted in undue delays to a child starting work. It took so long, the government says, for the branch to issue a permit that a child lost wages because of missed work. In fact, former employees report that the branch expedited the investigation of child employment permit applications.

To be sure, the former system was not without its shortcomings:

- As noted above, too many children worked without a permit.
- Over the years there was much discussion within the Employment Standards Branch about the most effective agency to oversee child employment. Concerns were expressed that even the branch's officers lacked the professional expertise to adequately assess workplace safety. The primary concern of workplace safety was arguably better placed under the jurisdiction of the WCB. Senior managers were made aware of government's potential liability arising from a child injured or killed while employed with a permit approved by the branch. Internal recommendations were made to transfer child employment permit responsibilities to the WCB. Nothing became of those recommendations.
- Education programs for parents and employers about child employment permit requirements were not pursued because of the cost of both the programs and processing the anticipated increase in the number of applications.

Rather than resolve these issues, however, the government has chosen to protect itself from potential liability and to shirk its responsibilities by simply ending the permit process altogether.

Knowing what questions to ask

A number of years ago, a BC Employment Standards officer visited a butcher shop to assess whether the worksite was suitable for a young teenage boy. On the site, the officer discovered that while the boy could easily enter the walk-in freezer, he was not strong enough to operate the internal lever to exit the freezer. In this instance the boy's parents had already consented to his employment – highlighting the fact that many well-intentioned parents simply don't know what questions to ask or how to ensure their child is doing tasks suitable to their ability and maturity.

New Regulations:

Regulation or Deregulation?

WHEN BILL 37 WAS FIRST INTRODUCED IN THE SPRING OF 2003, the government adamantly insisted it had no plans to write regulations governing child labour other than specific rules for the film and television production industry. Since that time, however, the Minister of Skills Development and Labour has had a change of heart and has developed regulations to replace the detailed Employment Standards Branch Interpretation Guidelines Manual.

Although government continues to insist these changes will better protect children, the new regulations will allow children to work extraordinarily long hours.

- Up to four hours on a school day;
- Up to 20 hours a week when school is in session;
- Up to seven hours on a non-school day;
- Up to 35 hours a week when school is not in session.

It is worth noting that a 35-hour work week is considered full-time employment for most adults. Furthermore, adding four hours of employment to a six-hour school day turns it into a 10-hour work day—and that's before homework or after-school activities. Working the maximum number of hours allowed will place a tremendous burden on children and inevitably take a toll on schoolwork. In addition, a child's right to play, rest and participate in after school activities will be seriously compromised by working four hours on a school day.

The old saying, '*the devil is in the details*,' is apt. In addition to these long work hours, new policy interpretation guidelines allow for a 35-hour work week when the school week is less than five school days in length.[9] This is the case in school districts that have moved to a four-day school week or during weeks when there are professional development days or statutory holidays. In this instance, a student might attend school four days and work an additional 35 hours—adding up to a 59-hour work week! A child can also be 'worked' up to four hours *before* going to school, therefore going to school tired. Other provinces, in contrast, place stronger limits on early morning work.

Alarmingly, the new regulations do not include prohibitions on workplaces or occupations (such as the use of power tools or door-to-door sales) and contain no

Adding four hours of employment to a six-hour school day turns it into a 10-hour work day—and that's before homework or after-school activities. Working the maximum number of hours allowed will place a tremendous burden on children and inevitably take a toll on schoolwork.

restrictions on the time of day when work may take place. There is no consideration of how children will get to and from their workplace. As well, the regulations make no distinction between children 12 years of age and those 14 years of age.

In addition, the regulation that an employer must ensure a child works only under the directand immediate supervision of an adult includes no requirement for employers to ensure that adult is trained or otherwise able to supervise a child worker. In fact, the regulations define *adult* as a person who has reached 19 years—hardly an adequate benchmark for workplace safety. As discussed later in this paper, 15–24 year-olds are *themselves* more likely to be injured on the job than those in other age groups.

The government plans to impose financial penalties on employers for violating *the Act* to achieve enforcement. This, it is argued, will provide better protection for child employees. With only a few regulations, none of which deal specifically with the child's wellbeing or prohibited occupations, employers should find it easy to comply. Fining an employer for working a 12-year-old more than 35-hours a week or for not providing a parent's written consent, can hardly be construed as a mechanism for protecting children.

The government has largely deregulated child employment. It has removed government oversight and ended the chance for employment standards officers and school officials to approve an employment situation *before* a child begins working. The new system is likely to reveal dangerous work situations only *after* a complaint, or worse, an accident, occurs.

Overall, when compared to the previous permit system, which imposed numerous employment conditions as well as a mechanism for each situation to be assessed by a trained government officer, these new 'regulations' are an affront to children's rights and place BC in a shameful position when it comes to protecting children and youth.

The Exception to No-Rules: Child Performers

While the government has indicated tremendous optimism about employers' ability to self-regulate, it does not extend the same thinking to the film and television industry. Making an exception for child performers, the need for oversight has been reinforced and detailed regulations have been imposed on the industry.[10]

In this instance government asserts that parents may succumb to the temptations of a child's potential earning power and recognizes that government restrictions are a necessary protection.[11]

In fact, children in BC who earned more than five thousand dollars last year as performers numbered less than fifty. And, unlike the broader child labour regulations, employers must also send a notification to the branch detailing which child is working on a film set.

The new child performer regulations specify maximum work hours within specific time frames and attach additional conditions to tasks, including stunts. These regulations, however, do not come close to the higher standard set by California laws. Nevertheless, in the face of a powerful US-based entertainment group lobbying the American federal government to keep high cost productions on home soil, BC policy-makers attempted to maintain some semblance of government regulations. Ironically, reducing child performer work standards to those applied to other child workers could potentially have hurt BC's multi-million dollar production business if US production companies were pressured to stay home due to the low child labour standards in the province.

Comparative Child Employment Standards

THE BC GOVERNMENT HAS FREQUENTLY STATED that these policy changes are needed for BC to remain economically "competitive." Yet BC has now moved to a position of having among the lowest standards for child employment in North America. It has earned the dubious distinction of becoming the most 'child labour friendly' jurisdiction. BC's new regulations fall far short of both international agreements and regulations in neighbouring jurisdictions.

Across Canada

Unlike other countries, jurisdiction over employment standards in Canada rests largely with provincial governments. Other than a few federal laws relating to shipping and mining, each province creates its own employment laws for both the general adult population and children. Employment laws dealing with children vary from province to province. All provinces make a distinction between adults and children (including youth) in the workforce. There is no agreement, however, on the age at which a child becomes an adult: in BC it is 15, in some other provinces 16 and under Canada's federal employment law, age 17. All provinces have the responsibility to set specific working conditions for children, either through regulations or a permit process.[12] All other provinces now impose more conditions on child employment than BC does.

- In **Saskatchewan**, children under 16 cannot be employed at a construction site, in the production process at a sawmill, in a forestry or logging operation, in a refinery or in metal processing.
- In **Alberta**, those 12-14 cannot be employed for more than two hours on a school day, more than 8 hours on other days or between the hours of 9 p.m. and 6 a.m.
- In **Manitoba**, children under 16 cannot work in a designated trade.
- In **New Brunswick**, children under 16 cannot be employed more than three hours on a school day, six hours on other days or between 10 p.m. and 6 a.m.

America's employment laws are encyclopedic compared to British Columbia's. There is a patchwork of very specific regulations either banning outright or severely restricting a child's employment in specific occupations or industries. Despite a general reputation for deregulation, America tightly regulates child employment.

The United States

Unlike Canada, jurisdiction in America is based on economic activity. A federal statute, *the Fair Labor Standards Act*,[13] covers all businesses with an annual volume of $50,000 or more. For small businesses, especially those in agriculture, state legislation prevails. Some states have adopted the federal standards for their state. America's employment laws are encyclopedic compared to British Columbia's. There is a patchwork of very specific regulations either banning outright or severely restricting a child's employment in specific occupations or industries. Despite a general reputation for deregulation, America tightly regulates child employment.

US federal child employment laws for non-agricultural employment are as follows:

- The minimum age for employment is 14 years old, with some exceptions: newspaper delivery; performing in radio, television, movie, or theatrical productions; and working for parents in their solely-owned, non-farm business (except in manufacturing or in hazardous jobs).
- Fourteen and 15-year-olds may be employed outside of school hours up to three hours a day and 18 hours a week when school is in session, and eight hours a day and 40 hours a week when school is not in session.
- Fourteen and 15-year-olds cannot work between 7 p.m. and 7 a.m., except during summers. During the summer, they may work until 9 p.m.

In addition, US federal law lists 17 prohibited jobs or job sites for youth under 18 (there are additional prohibited occupations for 14 and 15-year-olds):

1. Manufacturing or storing explosives
2. Driving a motor vehicle and being an outside helper on a motor vehicle
3. Coal mining
4. Logging and sawmilling
5. Using power-driven woodworking machines
6. Allowing exposure to radioactive substances and to ionizing radiations
7. Using power-driven hoisting equipment
8. Using power-driven metal forming, punching and shearing machines
9. Mining, other than coal mining
10. Meat packing or processing (including using power-driven meat slicing machines)
11. Using power-driven bakery machines
12. Using power-driven paper products machines
13. Manufacturing brick, tile and related products
14. Using power-driven circular saws, band saws and guillotine shears
15. Wrecking, demolition and ship-breaking operations
16. Roofing operations
17. Excavation operations

In Washington State, state laws say a child must be 14 to be employed in a non-agricultural sector job. On a school day, a 14-year-old cannot work more than three hours (and must have a 10 minute break after two hours). When school is in session, they cannot work more than 16 hours a week. They are also restricted from working between 7 p.m. and 7 a.m. during school or between 9 p.m. and 7 a.m. when school is not in session.

In Oregon, when school is in session, a 14-year-old cannot work more than three hours on a school day and on a non-school day no more than eight hours. There is a total limit of 18 hours a week. A 14-year-old cannot work between 7 p.m. and 7 a.m. during school time, or between 9 p.m. and 7 a.m. when school is not in session.

Areas of Concern

Education

Recent studies indicate that while employment can be beneficial to the development of young people, working excessive hours has a direct relationship to high school drop-out rates.

A recent Statistics Canada study[14] concluded, "Students who worked thirty hours or more (per week) were at the highest risk of dropping out." The report also notes that students who did not work at all were 1.5 times more likely to drop out of school. This report reveals that while work experience can be beneficial, the number of hours of work performed by a youth has a direct correlation to academic success. "In summary, the present analysis suggests that working and finishing high school can mix, if done in moderation."

As real dollar spending on public education in BC declines, school boards across the province have made tough decisions to cut spending. A few districts have already moved to a shortened, four-day school week, and others are considering following suit. A shortened school week will increase the time a young person is away from school and their availability as a potential employee. With inadequate restrictions on hours of work and no restrictions on types of employment, children and youth are vulnerable to demands to increase work hours. This correlates with a greater risk of dropping out of high school and by extension, fewer opportunities to attend post secondary programs.

At its core, the new regulations offer further potential compromises to a child's education by eliminating the opportunity for officers from the Employment Standards Branch to check with school officials before granting a work permit. School officials no longer have the chance to ensure that a child is keeping up with their studies before a work permit is granted.

Health and Safety

The Workers Compensation Board has reported for years that young people, 15–24, are injured on the job at twice the rate of older workers.[15] In addition, young people are far more likely to be injured during the first six months on the job site. The reasons cited for this higher rate of injury are consistent with international studies about the nature of adolescence. Characteristics that leave young people and children vulnerable include:

- Inexperience and lack of training.
- Lack of confidence or understanding of their rights as workers, making them more likely to be asked to do and to accept dangerous jobs.
- Inadequate preparation for the workplace.
- Sense of youthful invincibility.
- Unwillingness to ask questions.
- Ease of distraction.
- Inability to maintain the pace of work.

An increase in the number of children working, without an increase in training or supervision, may lead to many more job-related injuries, especially when there are no prohibitions against children working in hazardous occupations.

It is logical to assume that children under 15 will be at least, if not more, affected by the same characteristics that increase the risk of injury to those 15–24. An increase in the number of children working, without an increase in training or supervision, may lead to many more job-related injuries, especially when there are no prohibitions against children working in hazardous occupations.

Poverty and Economic Exploitation

Changes that make it easier to employ children have broad implications, including intensifying negative effects related to poverty. Research published in 2003[16] indicates that poverty remains a critical issue for many British Columbians. It is evident that some children are working to contribute to their family's overall income. For society, however, the goal should not be to make such work more accessible, but rather, to pursue policies that make such work *unnecessary.*

In 2002, the BC government introduced "The First Job/Work Entry Minimum Wage." This change allows employers to hire first time workers at $2 an hour less than the normal minimum wage for their first 500 hours of paid work. Naturally, this affects young workers to a far greater extent than others in the workforce. The government decided not to monitor the impacts of this change, hence there are no statistics about whether young workers continue to be employed after they reach the 500 hour mark. Anecdotal evidence indicates, however, that some young people have lost jobs upon reaching 500 hours. Dismissal due to reaching 500 hours of paid work experience is not a contravention of *the Act.*

Viewed in tandem with the First Job/Work Entry $6 minimum wage, deregulation of child employment makes hiring children far more attractive to employers. Children under 15 are more likely to be caught by the lower minimum wage net because they don't have the 500 hours of paid work needed to reach the regular minimum wage. This environment might encourage more children and youth to enter the workforce at lower wages, potentially resulting in the displacement of older workers who may be supporting dependents. This "bumping" effect speaks to the historic, economic necessity of child labour laws and evokes a slogan from the Great Depression: "*Don't hire a boy to do a man's job.*"

Increased child employment adversely affects wages and employment opportunities for older teens and adults by adding more potential employees to the labour pool. When children under 15 are employed, they compete in particular with older teenagers and young adults for low-paid, low-skilled employment. The younger group will likely displace the older group of workers, who may be post-secondary students or living on their own, dependent on that income to survive.

Need may induce parents earning low incomes or receiving provincial financial assistance to put their children to work. For some BC children, employment, not education, will become their primary activity, with obvious consequences for future employment prospects.

Twelve-year-olds paid the First Job/Work Entry minimum wage of $6 an hour can earn, even with limits of 20 hours a week, about $480 a month during the school year. During their summer vacation, they could gross about $900 a month. A child's income could considerably boost the overall earnings of low-income families. The temptation for children to work at a younger age, for longer

hours, at low-skilled jobs may prove too much for many low-income families who are struggling in BC. Normalizing an earlier work entry age may also erode opportunities for further education and higher skilled, better paying jobs in the future.

Child labour can also be used to avoid taxation since parents often employ their own children. A self-employed parent can pay their child as an employee or contractor, thereby transferring funds that become a business expense and thus a tax deduction to the parent. The income is kept 'in the family' and out of sight for taxation.

In another scenario, parents struggling with poverty and unemployment might feel they cannot refuse to give permission for a child to work, as the family needs the additional income. Consideration about whether or not employment is in the best interest of the child takes a backseat to the family's immediate financial pressures.

The new system poses an interesting dilemma: who represents the child's best interest when a parent is clearly benefiting from their child's employment?

International studies further indicate reasons for caution:[17]

- Child employment increases during depressed economic cycles.
- Child employees often do the job of machines: no or low-skilled, repetitive tasks.
- Economies that employ high numbers of child employees export low quality goods.
- Economies that employ high numbers of child employees erode employment. Opportunities for adults, leaving higher levels of adult unemployment.

Fraser Valley Crash

In the summer of 2003, the public was reminded of the risks faced by farm workers when a van carrying farm workers in the Fraser Valley crashed. Many of the agricultural workers, including young children, were not properly belted in. Although improvements have been made, the agricultural sector has historically put children (and their caregivers) from minority immigrant groups at risk. There are also health-related concerns for children employed in the agricultural sector, who can be very young. Often, they are not given proper facilities or clean drinking water and are exposed to pesticides. As well, children may work too many hours. Adding to the problem, parents or caregivers, often extended family members, may not have information in their first language on pesticide use or employment standards suitable for children.

International Agreements

BILL 37 CERTAINLY CONTRAVENES THE SPIRIT, and may contravene the letter, of a number of international treaties to which Canada and BC are signatories. Canada's leadership role to end child labour internationally is well recognized, which makes the current policy not only a departure from other provinces in Canada, but also a direct contradiction of Canada's international efforts. The issue of child labour is not a problem unique to the developing world.

While there are generally fewer concerns about child labour in Canada than in developing countries, the Canadian Coalition on the Rights of Children in a June 2003 report to the United Nations Committee on Children identified child labour in Canada as an emerging issue. In October 2003, the UN Committee recommended that Canada conduct nation-wide research to assess the extent of child labour in Canada in order to take measures to prevent the exploitative employment of children.

The United Nations Convention on the Rights of the Child[18] sets out principles to guide governments in protecting children in the workplace by prescribing the conditions of employment in legislation and regulations. The convention directs signatories to protect the child from economic exploitation and from performing any work that is likely to be detrimental to the child's moral, educational or physical development.

The convention further obliges signatory states to ensure that the hours and conditions of work are regulated and that adequate sanctions are in place to provide effective enforcement. It states that a child's work should not interfere with a right to education (article 26), play and recreation (article 31) or healthy development (articles 6 and 24). And the convention affirms that the state has a role to support parents to maintain an adequate standard of living (articles 18 and 27) so that children are not in a forced labour situation. Article 3 of the convention states that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Both Canada and British Columbia are signatories to the convention.

The International Labour Organization's (ILO) *International programme on the elimination of child labour*,[19] has identified child employment as a continuing problem for both developed and developing countries. ILO reports argue that a root cause of child employment continues to be poverty.

The ILO Convention requires that jurisdictions make a commitment to "raise progressively the minimum age for admission to employment . . ." The convention specifies that: "regulations may permit light work by 13–15 year-olds (or 12–14, initially), which is not likely to be harmful to their health or development, and does not prejudice their attendance at school or in vocations or training programs, or their capacity to benefit from the instruction received."

The ILO recommends the adoption of effective enforcement procedures through government inspectors, complaints procedures and adequate penalties. Although the ILO has established standards on minimum ages and conditions of child employment, Canada has yet to ratify this.

The *NAFTA Side Agreement on Labour*[20] is an addendum to the North American Free Trade Agreement. It was designed to prevent Canada, the United States and Mexico from engaging in a 'race to the bottom' in pursuit of competitive economic advantage at the expense of employees. In 1993, among other things, the three countries agreed to maintain the standards of their respective domestic employment laws. The agreement specifically mentions upholding current restrictions on "labour by children and young people." The Side Agreement also obliges signing partners to promote improvements to working conditions, regulatory enforcement and compliance mechanisms.

In economic terms, lowering BC's child labour standards may be interpreted as an unfair trade advantage by those jurisdictions striving to uphold international obligations and the protection of children's rights.

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Conclusion

In defense of lowering child labour standards, Minister Graham Bruce writes: "*...if parents feel that a youngster is better off not working, that is what will happen.*"[21] Unfortunately, the reverse is also true: if parents feel that their child is better off working, for whatever reason, under new legislation that is *far* more likely to happen.

Bill 37 transforms the significance of child employment in the economy. Child employment is moving from an opportunity to learn or earn pocket money to becoming a source of cheap labour for low-skilled employment.

It is wrong to conclude that because the former permit system was not perfect it should be done away with. Regardless of its shortcomings, the permit system stood for the principle that child employment was to be limited and should not compete with school and recreational activities.

Worldwide, governments and the public recognize that children have a right to a healthy childhood and educational opportunities. Developing countries are writing regulations to protect children and build sound economies based on increasing adult employment.

It is impossible to see how, as the minister claims, there will be more protection today than what was previously provided. The government is removing itself from a proactive and protective role in the employment of children. A more accurate characterization of these changes is that government is transferring the role of assessment and supervision of BC's employers on to parents. The assumption that parents are able to act as a stand-in for the Employment Standards Director is a misguided one that may result in exploitation by unscrupulous or uneducated employers. Most parents do everything in their power to protect their children. Not all parents, however, are willing or able to make decisions in the best interests of their children, and it is because of this situation that strong government supervision and regulation is needed.

Dismantling the permit system in the absence of writing protective legislation and regulations and without properly staffing enforcement agencies is potentially disastrous. There will likely be deaths and injuries and childhoods lost to employment.

Regardless of its specific shortcomings, the former permit system was based on a societal understanding that child labour should be strictly limited, that it should not interfere with schooling and that children have the right to time for play and relaxation. They are not little workers.

Implications of *work* vs. *labour*

"Child work implies that there is still time to attend school, learn important life skills, and socialize with family and friends, while child labour implies a situation where the child is forced to work in circumstances which harm his or her physical, emotional and intellectual development."
– UNICEF Canada

Notes

[1] Bill 37 text and changes available at the government's website: www.legis.gov.bc.ca

[2] Luke's story, written by his aunt, is published on the Life Quilt website: http://www.youngworkerquilt.ca/ The Canadian Life Quilt is a unique and permanent memorial dedicated to the thousands of young women and men between the ages of 15 and 24 who have been killed and injured on the job.

[3] Gwendolyn Richards, *The Globe and Mail,* August 6, 2003.

[4] Opinion Editorial by Graham Bruce, Minister of Skills Development and Labour, that accompanied the BC government news release about the new regulations on November 28, 2003.

[5] Source: Graeme Moore, a twenty-one year employee of the Employment Standards Branch who has extensive direct knowledge and internal documents indicating that child employment permit applications, with parental approval and school endorsement, were regularly declined by branch personnel.

[6] Thompson, Mark.1994. *Rights and Responsibilities in a Changing Workplace: A review of employment standards in British Columbia.* 'The Thompson Report', as it came to be known, was a complete review of employment standards in British Columbia and the last review of labour policy in BC.

[7] The Minister of State for Deregulation reports quarterly on the number of regulations each ministry has eliminated. Results are tallied as positive or negative numbers. See www.deregulation.gov.bc.ca

[8] An Internal Employment Standards Bulletin (01/07/10) gave specific direction to employment officers about guidelines on how to assess applications for employment of a child.

[9] As of November 28, 2003 Employment Standards Regulations, part 7.1, Policy Interpretation Guidelines 45.3 (3) states: "An employer must ensure that when a week has less than five school days a young employee is not required or allowed to work more than 35 hours in a week."

[10] New regulations for child performers were also released in December 2003. They are available on the ministry's website: www.labour.gov.bc.ca

[11] Direct quotation from the Ministry's Policy Advisor Jan Rossley during a meeting with author Helesia Luke and Minister Graham Bruce on December 8, 2003.

[12] *Labour Law Analysis.* November 2001. Strategic Policy and International Labour Affairs, Human Resource Development Canada.

[13] The United States Department of Labour website gives both federal and state labour law. See www.dol.gov

[14] Statistics Canada. May, 2003. *Learning, Earning and Leaving: The relationship between working while in high school and dropping out.*

[15] Workers Compensation Board. *Worksafe BC Young Worker Safety Fact Sheet.* The Workers Compensation Board details young worker injury rates by occupation. See www.worksafebc.com

[16] Goldberg, Michael and Long, Andrea. August 2003. *A Path to Poverty: A Review of Child and Family Poverty Conditions in British Columbia.* The Social Planning and Research Council of BC.

[17] *Understanding Children's Work and its Impact* is a study that is part of a broader effort to develop effective and long-term solutions to child labour. The project was initiated by the International Labour Organisation , UNICEF and the World Bank. See www.ucw-project.org

[18] Both Canada and BC are signatories to the United Nations Convention on the Rights of the Child. Articles 32 and 138 deal with obligations including the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In addition, States Parties are directed to take legislative, administrative, social and educational measures to ensure the implementation of these obligations. They specifically provide for a minimum age or minimum ages for admission to employment; appropriate regulation of the hours and conditions of employment and appropriate penalties or other sanctions to ensure effective enforcement.

[19] From the *Implementation Handbook for the Convention on the Rights of the Child,* UNICEF Canada. See www.unicef.org

[20] The NAFTA Labour Side Agreement states that no signatory state shall lower its current labour standards. The agreement specifically mentions child labour laws.

[21] Opinion Editorial by Graham Bruce, Minister of Skills Development and Labour, which accompanied the release of new regulations on November 28, 2003.

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