

# ERODING WORKER PROTECTIONS

British Columbia's New 'Flexible' Employment Standards



By David Fairey

NOVEMBER 2005



**CCPA**  
CANADIAN CENTRE  
for POLICY ALTERNATIVES  
BC Office

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### ABOUT THE AUTHOR

**DAVID FAIREY** has an MA in Labour Economics from the University of British Columbia. He has been a labour research economist and labour relations consultant in British Columbia for over 30 years, and Director of the Trade Union Research Bureau since 1989. He is also a research associate with the Canadian Centre for Policy Alternatives' BC Office.

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**CCPA**  
CANADIAN CENTRE  
for POLICY ALTERNATIVES  
BC Office

[www.policyalternatives.ca](http://www.policyalternatives.ca)

#### CCPA BC Office

1400 – 207 West Hastings St  
Vancouver, BC V6B 1H7  
tel: 604-801-5121

[ccpabc@policyalternatives.ca](mailto:ccpabc@policyalternatives.ca)

#### CCPA National Office

410 – 75 Albert St  
Ottawa, Ontario K1P 5E7  
tel: 613-563-1341

[ccpa@policyalternatives.ca](mailto:ccpa@policyalternatives.ca)

# Contents

<b>Summary</b> .....	<b>4</b>
<b>Introduction</b> .....	<b>8</b>
<b>Why Employment Standards Matter</b> .....	<b>9</b>
<b>The BC Government’s ‘Flexible’ Labour Strategy</b> .....	<b>11</b>
<b>BC’s Employment Standards Regime</b> .....	<b>14</b>
<b>Legislative Changes</b> .....	<b>16</b>
Exclusion of Employees Covered by Collective Agreements .....	17
Employment of Children .....	19
Employer Requirements to Inform Employees of their Rights .....	20
Hours of Work and Overtime .....	20
Statutory Holidays .....	21
Complaints, Investigations and Determinations .....	21
Wage Recovery .....	22
Appeals .....	23
<b>Regulation Change by Executive Order</b> .....	<b>24</b>
Exclusions and Variances .....	25
Minimum Wages .....	25
<b>Changes to Administration and Enforcement</b> .....	<b>29</b>
Program, Budget and Staffing Reductions .....	29
Administrative Measures and Procedural Changes .....	31
<b>The Impact of Changes on Complaints and Compliance</b> .....	<b>33</b>
<b>Conclusion</b> .....	<b>36</b>
<b>Notes</b> .....	<b>39</b>
<b>References</b> .....	<b>41</b>
<b>Appendices</b> .....	<b>46</b>

# Summary

British Columbia's employment standards system has undergone a dramatic overhaul in recent years, with substantial changes made to nearly every significant aspect of the law and its enforcement.

Three government bills between May 2002 and May 2004 (Bills 48, 37 and 56) made approximately 42 changes to the *Employment Standards Act*, and a further 40 changes were made to the *Employment Standards Regulation* since 2001. At the same time, there has been a radical reduction in budgets and staffing resources for the Employment Standards Branch.

This study provides a comprehensive review of the changes and evaluates their impact on the system's ability to provide effective minimum protections for workers in BC.

## Key Findings

Sweeping reductions and changes to the enforcement program in BC have had a serious and negative impact on the ability of workers to become aware of their rights in the workplace, to complain of violations of their rights, and to obtain fair treatment in the process of pursuing complaints and having their complaints adequately investigated. (See the additional findings section for a list of specific changes.)

- According to new data requested by the author of this study from the Ministry of Labour, the number of complaints of violations filed by workers with the Employment Standards Branch plummeted by 46 per cent 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 per cent.
- Approximately two thirds of all complaints received resulted in "determinations of violation" by the Branch (meaning a worker's rights were found to have been violated).
- Between 2000/01 and 2004/05, the budget of the Employment Standards Branch was cut by 16 per cent, one third of Branch staff was cut, and the number of branch offices around

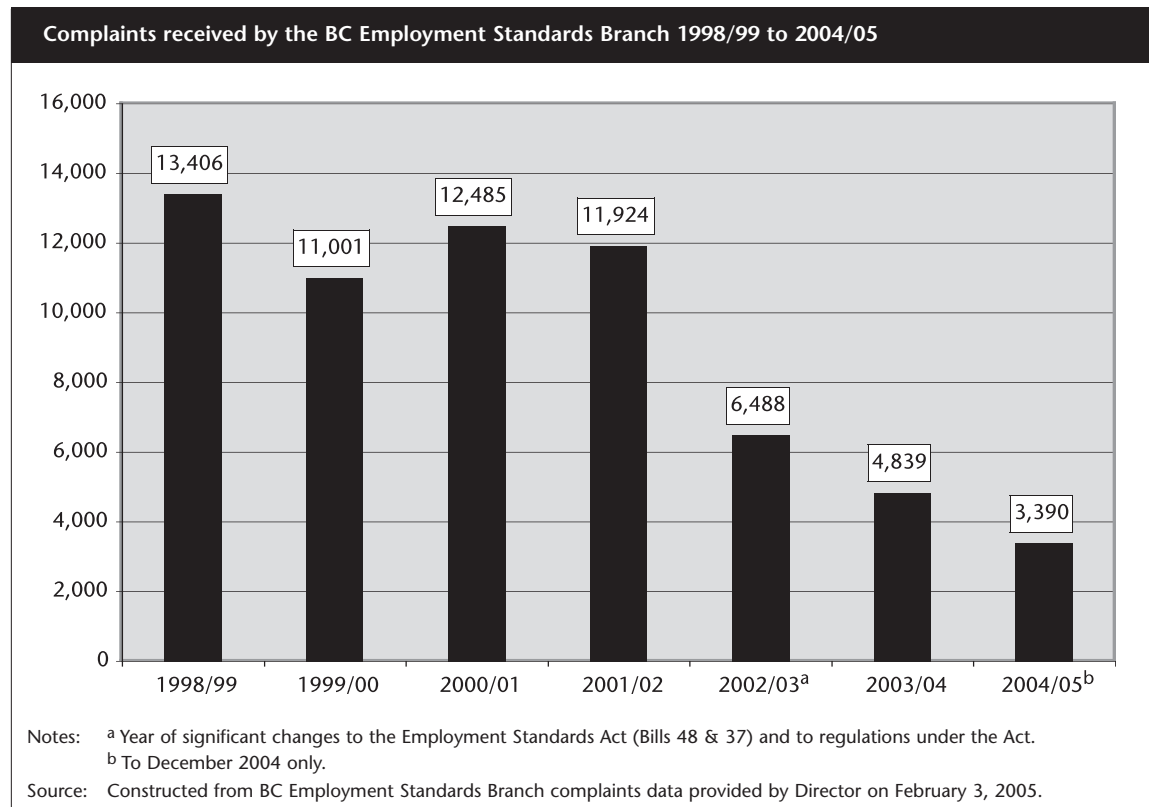
the province was reduced by 47 per cent, from 17 to nine. These cuts have reduced if not eliminated pro-active compliance investigation by Branch staff in large areas of the province, and the Branch is now almost exclusively operating in a rigid, office-based complaints processing mode.

- The enforcement capacity of the Employment Standards Branch was gutted at the same time as both the number of workers and the number of workplaces in BC was growing, which means fewer staff are now expected to protect a larger workforce.
- The dramatic decline in complaints cannot be explained by an overnight improvement in employer behaviour. Rather, the drop has resulted mainly from the policy changes outlined in this report. For example, the requirement that employees first confront their employer using a complicated 16-page “Self-Help Kit” before being allowed to file a complaint with the Branch was described by one Employment Standards Officer interviewed for this study as having an immediate effect “like the turning off of a tap.”

Some positive changes were made (for example, employer fines for violations were increased), however, they are far outweighed in both number and significance by those that undermine the ability of the employment standards system to provide meaningful protections to all workers.

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.

In several areas, BC now has the dubious honor of having the lowest standards anywhere in Canada. These include: the exclusion of unionized workers from coverage by core provisions of the *Act*; the \$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 near-total deregulation of the employment of children aged 12 to 15.



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 already least able to negotiate fair and decent working conditions.

## Additional Findings

Exemptions and exclusions 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 per cent 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 (such as the requirements to pay minimum wage and the employment of children).
- The definition of farmworker was expanded and they were 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.

The minimum conditions of work have been lowered, the rules have been made more complicated, and more exceptions have been introduced:

- Complicated overtime averaging agreements between individual employees and their employers mean a person be pressured to work 12 hours per day for seven straight days without being paid any overtime.
- The minimum shift was reduced from four hours to two.

## Why Employment Standards Matter

‘Employment Standards’ are part of the broader system of labour standards that govern the conditions in which people do paid work.

Employment standards deal with issues such as the minimum wage, minimum and maximum hours of work, overtime pay, parental leave and statutory holidays. They are supposed to offer a basic level of protection for all workers – providing assurance that they can earn a decent living under reasonable conditions, protect their personal safety, and balance work and family life.

These standards are important for everyone in the paid labour force because they provide a minimum floor below which employers cannot go and a starting point for negotiations for improved working conditions. They also establish a fair playing field for employers, reducing unfair competition.

While employment standards matter to all workers, they are especially 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. Vulnerable workers are disproportionately women, recent immigrants, racial minorities and young people.

- To qualify for a statutory holiday with pay, an employee must have worked at least 15 of the previous 30 calendar days.
- A \$6 “first job/entry level wage” was introduced, which is discriminatory towards youth, who are the vast majority of new members of the work force.
- Statutory holiday pay was cut from the minimum piecework rates paid to farmworkers.

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.
- The Director of the Employment Standards Branch is no longer required to investigate every complaint received.
- 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.
- 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.
- The Branch can now charge a fee to a person wishing to appeal a determination; the grounds for appeal have been substantially restricted; and the Employment Standards Tribunal can now dismiss an appeal without a hearing when one or more of the restrictive new grounds for appeal has not been met.
- The Skills Development and Fair Wage Compliance Program was terminated and staffing for the Agricultural Compliance Team was reduced by 73 per cent, eliminating pro-active enforcement for two notoriously problematic sectors, construction and agriculture.

The study makes recommendations for the provincial government to implement a more effective employment standards enforcement regime, including calling on it to:

- Increase enforcement staffing;
- Re-establish Branch offices throughout the province to provide greater, more equitable access to in-person assistance, complaints processing, investigations and adjudications;
- Translate of all public information and complaints filing instructions into additional languages, at least Chinese and Punjabi;
- Re-establish a wide-scale pro-active program of random workplace audit inspections; and
- Establish an independent Workers’ Advisers program similar to that established under the *Workers’ Compensation Act*.



# Introduction

Following its election victory in May 2001, BC's new provincial government embarked on a program of sweeping change with respect to labour policy, and in particular employment standards. Central to this program was a perceived need to increase 'flexibility' in employment standards law and administration.<sup>1</sup> The new Liberal government also claimed its labour policies would enhance the protection of vulnerable workers in certain sectors. Over the ensuing four years substantial changes were made to nearly every significant aspect of employment standards law and its enforcement.

This paper begins by reviewing the nature and purpose of employment standards law in Canada. It then considers recent BC Liberal Party and government statements about their desire to change employment standards policies. The paper explores the conflict in the employment 'flexibility' purposes of the provincial government's legislative changes and the stated objective of protecting vulnerable workers in a labour market environment of growing segmentation, polarization and vulnerability.

The paper then identifies and describes the main changes to employment standards law, regulation, and administration and enforcement since 2001, and discusses how these changes alter previously established employment rules and practices. It provides preliminary assessments of the potential impacts on those workers the law was originally designed to protect and support,<sup>2</sup> and details the impact the changes have already had on enforcement and complaints.

Research began by developing a baseline of information and data relating to every aspect of the law,<sup>3</sup> its administration and enforcement before the changes of 2001 to 2004. The impacts of these changes on the working and earning conditions of BC workers is assessed over subsequent years against this baseline.

In conducting research for this paper the author reviewed employment standards legislation in BC, government statements related to changes in the legislation, Employment Standards Branch policy and procedure documents and complaints and investigations data, and ministry service plans and budgets. The author conducted interviews with the Director of Employment Standards, former senior Branch staff, and current enforcement staff. In addition, the literature on employment standards and labour regulation more generally was reviewed, and relevant labour force data published by Statistics Canada examined. During the course of this work the author participated in a national roundtable in Ottawa, *Achieving Compliance with Employment Standards*, convened by the Canadian Policy Research Networks and the Institute of Public Administration of Canada.

# Why Employment Standards Matter

‘Employment standards’ are a sub-category of labour standards, which also include:

- labour relations/collective bargaining laws;
- occupational health and safety and injury compensation;
- employment/unemployment insurance; and
- workplace human rights and employment equity laws.

Employment standards deal with issues such as minimum wages, minimum and maximum 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 – in essence an array of labour laws that 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 mean that collective bargaining has been able to concentrate on winning improvements above and beyond minimum standards.

Paul Malles indentified for the Economic Council of Canada’s 1976 Labour Market Study<sup>4</sup> four broad objectives for employment standards law in Canada:

- narrow the gap between the wages and working conditions obtained by organized labour through collective action, and by unorganized labour;
- protect individual employees against undue exploitation;
- eliminate unfair competition between employers; and
- raise the living standards of the working poor.<sup>5</sup>

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. As such, employment standards are widely recognized as a key public policy tool for providing a minimum level of economic security for the most disadvantaged and vulnerable workers.

Labour market vulnerability has been identified as including:

- low-income self-employed individuals who fall outside the scope of employment standards legislation;
- employees who though legally entitled to employment standards protections have difficulty accessing these rights;

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.

- employees who lack access to non-statutory benefits (such as extended health benefits), or because of their part-time status lack access to statutory employment standards benefits (such as parental leave or holidays);
- workers unable to qualify for or fully benefit from Employment Insurance or public pension plans; and
- adult workers whose earnings are very low over long periods of time, because of low wages and/or lack of stable employment.<sup>6</sup>

In a new study of non-standard work and the economic well-being of vulnerable workers in Canada, Richard Chaykowski found that the segment of the labour force that may be characterized as economically vulnerable is sizeable – about one third of all individuals who do paid work over the course of a year, and about 11 percent of those who are employed on a full-time basis throughout the year.<sup>7</sup>

It is a common assumption that workers in so-called “standard” jobs have either the protection of a union or of employment standards legislation geared to standard forms of employment. However, Saunders

and Maxwell point out that workers with regular, full-time jobs may still lack meaningful access to employment rights. They give as examples workers who are unaware of their rights, workers who are told they are independent contractors when in fact they are in an employment relationship, and more generally workers (especially low paid) who lack representation and are reluctant to assert their rights.<sup>8</sup> Vulnerable workers are disproportionately women, recent immigrants, racial minorities and young people.

# The BC Government's 'Flexible' Labour Strategy

Workers' rights and economic security in the province of British Columbia have changed dramatically since 2001. In November of that year, the newly-elected provincial government embarked upon a series of substantive changes to the *Employment Standards Act*, regulations under the *Act*, and the system of administration and enforcement of the *Act*. 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."<sup>9</sup>

"Flexibility" is key to the provincial government's overall labour strategy. It reflects the neoliberal theory that greater workforce "flexibility" will increase competitiveness and thus enhance job growth. This argument gained currency with governments in the 1990s when the Organization for Economic Co-operation and Development (OECD) developed a *Jobs Strategy* that it pushed its member countries (including Canada) to follow. Central to the *Jobs Strategy* was the premise that if governments adopted more market-based or neoliberal policies – and in particular reduced social support programs and deregulated labour laws – the workforce would become more "flexible."

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. It is for this reason that many critics of the OECD *Jobs Strategy* refer to it as a “low-wage strategy.”

Stephen McBride and Russell Williams (2001) tested the *Jobs Strategy*'s premise and its push for increased labour flexibility. Their review of labour laws and employment in all OECD countries found that, contrary to the OECD hypothesis, there was no correlation between labour flexibility and employment rates. Indeed, a number of countries with very high labour and employment standards (such as Denmark and the Netherlands) were also among the best performers with respect to employment rates. Additionally, Andrew Jackson, research director with the Canadian Council on Social Development, has found that many of these same countries are also among the strongest performers with respect to GDP growth.

Nevertheless, many employers and business associations are eager to see employment standards relaxed. A review of numerous provincial government statements and reports and the submissions of employer organizations in 2001 reveals that the ‘regulated flexibility’ model adopted by the province corresponds closely to a broad range of business objectives. These include:

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. It is for this reason that many critics of the OECD *Jobs Strategy* refer to it as a “low-wage strategy.”

- fewer laws and regulations (deregulation);
- total exclusion from the law for more occupations, industries and sectors;
- increased partial exclusion of occupations, industries and sectors from specific requirements of the law;
- greater flexibility in the application of specific minimum standards (e.g. hours of work and overtime);
- the option of employers and their employees by “agreement” to “opt-out” of certain legislated requirements; and
- opportunities for non-complying employers to “settle” the violation complaints of employees under terms that are less than the law prescribes.

According to the provincial government’s statements, its labour strategy is intended to address the “increasingly globalized marketplace where competition is tighter and competitive advantages more crucial.”<sup>10</sup> Further, “provincial and regional economies must be defined

by a culture of increasing knowledge and innovation.”<sup>11</sup> Former Labour Minister Graham Bruce asserted that these “changes send an important message to the labour relations community and to investors. They say that BC is open for business and that we are prepared to make sure labour relations in British Columbia are balanced, fair-minded, and support growth and prosperity.”<sup>12</sup>

The province has attempted to position its drive to increase workforce flexibility as being good for workers as well as business. For example, the stated goals of the new legislation were, allegedly, to:

- protect vulnerable employees, particularly those in certain sectors;
- encourage flexible workplace partnerships;
- help revitalize the economy, specifically small business, by recognizing the needs and the realities of the workplace; and
- simplify the rules.<sup>13</sup>

The goal of protecting vulnerable workers is restated in the most recent three-year *Service Plan* (to 2008) of the BC Ministry of Skills Development and Labour. Former Minister Graham Bruce also stated that “Providing protection to our most vulnerable workers is a priority for the Employment Standards Branch.”<sup>14</sup> However, a growing body of research points to the changing structure of employment and the disproportionate growth of non-union, non-standard, contingent and precarious employment, and

the resulting growth of economically vulnerable workers.<sup>15</sup> Considered in this context, it becomes apparent that increased flexibility in employment standards is in conflict with enhancing the workplace protection of vulnerable workers and with increasing their economic security. Indeed, the obvious potential is for workforce “flexibility” to have the opposite effect.

As a review of the actual changes to BC’s employment standards shows, on balance, the provincial government’s policies increase workers’ vulnerability by limiting employment protections and decreasing their bargaining power relative to their employers.

# BC's Employment Standards Regime

The subsequent sections of this paper review and offer a preliminary evaluation of the changes made to BC's employment standards during the 2001–2004 period. Employment standards in BC include legislation, regulation, and administration and enforcement. Significant changes were made in all three areas.

Changes are assessed in the following sections in terms of whether they enhance or undermine the economic security of workers – that is, whether they strengthen the protections and rights of employees relative to employers.

Of course there are those who would object to characterizing a given change as either enhancing or undermining the economic security of workers. Neoliberal theorists and practitioners reject the notion that policies such as those we are about to outline are either “pro-worker” or “pro-employer,” preferring to believe that policies that benefit employers are a benefit to both workers and employers. The OECD *Jobs Strategy* would similarly contend that policies that promote business also enhance employment, and thus benefit workers. However, there is little evidence to support the view that “flexibility” policies actually result in increased employment. There is ample evidence that policies that limit the rights of workers leave them less secure and more vulnerable.

## Legislation

The *Employment Standards Act* sets out the overall scope and structure of employment standards in BC. The *Act* was substantially restructured in 1995 following recommendations of the first and only comprehensive independent review of the *Act* in 1994 by Commissioner Mark Thompson of the University of British Columbia's faculty of Commerce and Business Administration.<sup>16</sup>

## Regulation

The *Employment Standard Regulation*<sup>17</sup> is that part of the law which is decided upon by the government's executive, and does not require assent of the legislative assembly, only the stamp of approval of the Lieutenant Governor (as set out in Part 14 of the *Act's* General provisions, Section 127).

The *Regulation* establishes policies applicable to the general provisions of the *Act*, and is the subject of more frequent change than the *Act*. For example, the setting of minimum wage rates, and the establishment of specific variances and exclusions from the *Act* are parts of the law made by *Regulation* change. The *Regulation* has a structure and subject sequence similar to that of the *Act*.

## Administration and Enforcement

Administration of the *Act*, and the policing and enforcement of its provisions and regulations, is the responsibility of the Minister of Labour and Citizens' Services through the Director of the Employment Standards Branch and her/his staff.

Given that there have traditionally been large groups of employees who depend for their protection on the minimum standards established by the *Act*, the system of enforcement is crucial to the effectiveness of the statute.<sup>18</sup>



# Legislative Changes

Three government bills over the period May 2002 to May 2004 made approximately 42 changes to the *Employment Standards Act*. The majority of these changes were made as a result of Bill 48 (May 2002).<sup>19</sup> Bill 37 (May 2003)<sup>20</sup> made about eight significant changes to the *Act*, the most significant of which established new and radically lower standards governing the employment of children under 15. Bill 56 (May 2004)<sup>21</sup> brought the powers, rules and procedures of the Employment Standards Tribunal, previously prescribed by the *Act*, within the much more restrictive and “legalistic” requirements of all administrative tribunals under a new *Administrative Tribunals Act*.

Changes to the *Act*, *Regulation* and its administration and enforcement were assessed in terms of whether they enhance or undermine the economic security of workers – that is, whether they strengthen the protections and rights of employees relative to employers. The following specific criteria were used, in terms of whether there has been an increase or decrease in:

- scope of employment covered;
- types and levels of minimum wages and other payments, and the eligibility requirements;
- types and levels of protections for covered employees relative to the constraints placed on employers in establishing non-payments conditions of employment;
- measures prescribed to ensure employer compliance;
- measures and resources used to enforce minimum standards;
- effectiveness of employee and employer information and education by government agents concerning the rights and obligations of each; and
- employee access to, and the adequacy and effectiveness of, appeal rights and procedures.

Of the 42 substantive changes made to the *Act* only seven are assessed by the author to be of benefit to workers. The other 35 are assessed to either have negative impacts for workers (the majority) which far outweigh the few positive changes, or to be of a relatively neutral nature.

The changes to the *Act* assessed as being positive for workers are as follows:

- time worked is now counted to include work required to be done during a meal break;
- notices of termination have no effect if issued during a “temporary layoff”;
- the Director of the Employment Standards Branch’s powers were expanded to include, upon finding a violation, the posting of workplace notices concerning Branch decisions, directing that a payroll service be utilized to pay an employee, and ordering payment of costs incurred by the Branch in relation to investigation of a violation;
- monetary penalties imposed on employers have been made mandatory in the event of a violation (previously at the Director’s discretion);
- employers are prohibited from deducting or withholding from wages in one pay period amounts required to be paid in another pay period to comply with the minimum wage provisions (for example, if in the first pay period an employee has earned wages at the rate \$9 per hour – \$1 per hour above the minimum wage – the employer cannot withhold payment of \$1 per hour at the end of that pay period, to be paid at the end of the second pay period during which the employee is only paid \$7 per hour, so as to make it appear that she or he has been paid the \$8 per hour minimum wage in the second pay period);
- the Director’s power to vary or cancel a determination of violation has been restricted to a time period within 30 days of receipt of a copy of an appeal of such determination; and
- the enforcement provisions were changed to clarify that the liability for unpaid wages extends to directors and officers of corporations, firms, syndicates or associations considered to be the same employer; however, as discussed below, the wage recovery provisions of the *Act* were negatively changed to relieve company directors and officers from liability if their companies are in bankruptcy or receivership.

The government made great rhetorical hay with these changes at the time they were brought in, seeking to advance the notion that its legislative package would enhance the protection of vulnerable workers. As we will see, however, the balance of changes has quite the opposite effect.

The following section summarizes the most significant negative changes to the *Act* as a result of Bills 48 and 37, and makes a preliminary assessment of the potential impacts on workers, especially vulnerable workers.

## Exclusion of Employees Covered by Collective Agreements

The section of the *Act* that set out its scope was completely rewritten. It now excludes from major provisions of the *Act* all employees covered by a collective agreement if the collective agreement contains any language respecting these provisions. Before this change, unionized employees were still covered by minimum employment standards – a collective agreement could set out only equal or better employment conditions. Now, a collective agreement can spell out employment conditions that are *below*, as well as at or above, minimum legal standards.

This is the first time that a specific group of employees, by virtue of membership in a union, have been excluded by the *Act*. All previous exclusions were by *Regulation*. This change was requested in 2001 by the BC Business Council and the Coalition of BC Business.<sup>22</sup>

The new *Act* excludes from its minimum standards unionized employees when the collective agreements they work under contain “any provision” dealing with the following matters:

- hours of work and overtime (exclusion from all of Part 4 of the *Act*);
- statutory holidays (exclusion from all of Part 5);
- annual vacation or vacation pay (exclusion from all of Part 7);
- seniority retention, recall, termination, or layoff (exclusion from Section 63 – employer’s liability to pay compensation for length of service in the absence of notice of termination);
- paydays (exclusion from Section 17);
- payment of wages upon termination (exclusion from Section 18);
- how wages are to be paid (exclusion from Section 20);
- assignment of wages – employer’s duty (exclusion from Sections 22, 23 and 24);
- supply of special clothing/uniforms (exclusion from Section 25);
- payments by employers to funds for employees, insurers or others (exclusion from Section 26);
- wage statements (exclusion from Section 27); or
- payroll records – content and requirements (exclusion from Section 28);

This is the first time that a specific group of employees, by virtue of membership in a union, have been excluded by the *Act*. All previous exclusions were by *Regulation*. This change was requested in 2001 by the BC Business Council and the Coalition of BC Business.

In essence, all unionized workers are thus excluded, as all have collective agreements with provisions dealing with at least some of the above matters. This new exclusion impacts a large segment of the labour force – according to the Labour Force Survey estimates of Statistics

Canada in 2004, 34.3 per cent of all employees in British Columbia worked under union collective agreements.<sup>23</sup>

This change has serious negative potential because it invites, according to industrial relations experts interviewed,<sup>24</sup> corrupt arrangements between employers and pseudo/employer-dominated unions that now exist in BC. If, for example, a collective agreement contained a provision stating that “Only employees with more than five years of service are eligible for a day off work with pay on a statutory holiday,” employees with less than five years of service would no longer be entitled to statutory holidays with pay – even though this would be an illegal arrangement for non-unionized employees. Or, if a collective agreement contained a provision stating that “Layoff will be at the whim of the employer,” employees would be denied access to the termination pay provisions of the *Act*. Similarly, if a collective agreement stated that “All hours of work shall be paid at straight time rates of pay,” none of the *Act*’s hours of work provisions would apply.<sup>25</sup>

In addition, the *Act* was changed so that, where a collective agreement exists, the employees covered by it no longer have access to the complaints, investigations, enforcement and appeals provisions of the *Act* (Parts 10, 11 and 13) with respect to:

- the employment of children (Section 9);
- payment of fees to obtain a job or job information (Section 10);
- requirements to pay minimum wage (Section 16);
- deductions from pay (Section 21);

- jury duty leave (Part 6);
- group terminations (Section 64);
- rules on notice of termination (Section 67); and
- rules on payments on termination (Section 68).

Any complaints or disputes in these areas for unionized employees must now be resolved through the collective agreement grievance procedure.

## Employment of Children

Significant changes were made to the *Act* with respect to the employment of children under the age of 15 in two rounds of legislation (Bill 48 in 2002 and Bill 37 in 2003). Prior to these changes no employer was allowed to hire a child under the age of 15 without first obtaining a permit from the Director of the Employment Standards Branch, which required parental and school consent. In deciding whether to issue a permit, the Director had the option to investigate the workplace and put restrictions on the type and hours of work.

The child employment permit system was replaced with provisions that allow employers to hire children between the ages of 12 and 14 merely after the employer has obtained the consent of one parent or guardian, shifting all responsibility for the workplace safety and well-being of such children to the parent or guardian. In addition, there is a new provision allowing the employment of children under 12 years of age with the permission of the Director of the Employment Standards Branch.

A further significant change made to employment standards with respect to the employment of children was the introduction of regulations on permitted hours of work. The new regulation permits a child (12 years of age and older) to work up to four hours on a school day, up to seven hours on a non-school day (unless approved by the Director), up to 20 hours in a week with five school days, and up to 35 hours in any other circumstance.

An in-depth analysis of Bill 37 by public education and child protection advocates has characterized these changes as a transfer of the role of assessing and supervising employers of children away from government and onto parents. The shift is deemed to be misguided and potentially disastrous because it assumes that parents can act as a stand-in for the Employment Standards Director. Without government oversight, they argue that children are left vulnerable to workplace injuries and even death, and that education and development opportunities may be cut off.<sup>26</sup>

Child protection advocates have made the point that while most parents would never knowingly permit their children to work in an unsafe environment, “it is also true that most parents do not have access to the in-depth knowledge and training needed to assess worksite safety.”<sup>27</sup>

A recent Canadian Centre for Policy Alternatives/Simon Fraser University Economic Security Project study of BC’s *Employment Standards Act* with respect to child labour found that, as a result of Bill 37 and subsequent changes to the *Regulation*, BC now provides less protection to child workers than other jurisdictions in Canada, the United States and the European Union.

The study included an online survey of the recent employment experiences of public school students in BC, aged 12 to 18 years. It revealed that significant numbers of employed 12- to 14-year-olds had not had the health and safety of their workplaces evaluated by their parents and had been employed without written approval of their parents, despite the fact that both are required by the new *Act*. Other violations of the *Act* were also found. Perhaps most worrisome, over 70 per cent of employed 12- to-14-year-olds were working without adult supervision some or all of the time. The findings demonstrate that the new system of self-regulation and enforcement of child labour protections is failing.<sup>28</sup>

## Employer Requirements to Inform Employees of their Rights

Under Section 6 of the *Act*, employers are no longer required to post in workplaces statements of their employees' rights under the *Act*. And under Section 31 employers are no longer required to post in each workplace hours of work notices, nor to give employees 24 hours' notice of shift changes. As a consequence all workers – especially vulnerable workers – will be less informed of their rights (because employers have an incentive to not voluntarily inform them). Employees subject to frequent shift changes no longer have any guarantee of a reasonable ability to plan their lives.

## Hours of Work and Overtime

Under Section 34 the minimum daily shift has been reduced from four hours to two hours. This change constitutes a clear lowering of benefits, and impacts significantly on part-time employees in the retail, cultural, recreational and food service industries. It means that some workers may find their short shifts provide limited pay after the cost of transportation, and some vulnerable workers will be forced to patch together more part-time jobs in order to make ends meet.

Under Section 36 the requirement for double-time pay when an employee is required to work during the 32 hours of rest required each week was reduced to time and a half.

The regulation previously allowed for flexible work schedules with the approval of 65 per cent or more of affected employees. This has been replaced by new provisions allowing employers to enter into agreements with individual employees for them to forgo their statutory rights to overtime pay. Overtime pay was previously required for work in excess of eight hours per day and/or 40 hours per week. Under new "hours averaging agreements," overtime rates may not apply for up to 12 hours of work per day, provided hours worked do not exceed an *average* of 40 hours per week over a four week period. In addition, minimum daily overtime pay at double-time rates does not apply until after 12 hours of work; previously double-time pay applied after 11 hours of work.

For employees not working under an "hours averaging agreement," the daily hours worked before double-time for overtime is paid was also extended from 11 hours to 12 hours, and double-time pay for all hours worked in excess of 48 hours per week was reduced to time and a half.

There are several negative features in the new "hours averaging agreement" provisions:

- the individuality of such agreements subjects individual employees to employer coercion and duress to sign without representation;
- the elimination of democratic decisions made by all employees in the work group to be affected;
- the impossibility of Employment Standards Branch enforcement because employers are not required to register such written agreements for Branch approval;
- the greater range of work schedules possible than under the previous rules;
- the provision is complex, confusing and there is no direction to employees and employers as to what happens when employees do not work a shift due to sickness or other absence from work, how scheduled work on a statutory holiday is to be compensated, how vacations are impacted, and how payments on termination are affected.

## Statutory Holidays

Added to the 30 calendar days of employment to qualify for a statutory holiday with pay is a new eligibility requirement that an employee must also have worked or earned wages for at least 15 of the 30 calendar days before the holiday. This new provision eliminates statutory pay completely for many part-time employees. It also rolls eligibility back over 10 years to the way it was prior to 1995, when the Thompson Commission recommended changes to benefit part-time employees. Commissioner Thompson reported in 1994 that he had received submissions that the 15 worked days requirement then in place created confusion about the application for part-time workers, and that they might work regularly without ever becoming eligible for a paid holiday.<sup>29</sup>

Several other changes were made in this area. Statutory holiday pay is now calculated on the basis of an average day's pay for all days worked in the preceding 30 calendar days instead of the same amount of pay as if the day had been worked. In addition, the requirement to schedule another day off with pay for employees who work on a statutory holiday has been removed. And the requirement to provide an employee with a day off in lieu of a statutory holiday when the statutory holiday falls on the employee's day off has been removed.

All of the above changes to minimum standards in the *Act* are of benefit to employers at the expense of employees.

Statutory holiday changes roll eligibility back over 10 years to the way it was prior to 1995, when Commissioner Thompson received submissions that the 15 worked days requirement then in place created so much confusion that part-time workers might work regularly without ever becoming eligible for a paid holiday.

## Complaints, Investigations and Determinations

Some of the most significant changes to the *Act* have been to Part 10 with respect to the rights of employees to file complaints of employer violations, and how complaints are to be handled by the Director of the Employment Standards Branch and his/her staff.

The Director is no longer required to "investigate" every complaint received, only to "accept and review" complaints. But a complaint does not have to be accepted or reviewed if "the employee has not taken the requisite steps specified by the Director in order to facilitate resolution or investigation of the complaint."

These changes establish the legal framework for the Employment Standards Branch to adopt new administrative policies and procedures, which include:

- the requirement that complaining employees first confront their employer with their complaint, with the aid of a new "Self Help Kit," before being permitted to file a written complaint with the Employment Standards Branch;
- the replacement of active "investigation" of complaints by Employment Standards Officers with a new "mediation" process to try to obtain new "settlement agreements"; and
- a new "adjudication" role for Officers in the event that a "settlement" cannot be reached, where Officers convene formal hearings to receive the evidence of both parties to a complaint (and which must be attended by the complainants and their employers), and then issue written decisions.

According to former senior Employment Standards Branch staff, resolution of disputes between employers and employees by way of a mediated settlement had long been a “useful practice” of the Branch prior to 2002. And there were good reasons for this practice if employees were in a hurry to obtain at least some of the money owed, the facts were not entirely clear, or both parties were partly in the wrong. However, Officers were cautious in their use of mediated settlements because of their potential to become a means to undermine the *Act*, since most employees acted on their own without counsel or representation, whereas employers were often accompanied by legal counsel and exerted their greater power.<sup>30</sup>

Although not clearly defined, new “settlement agreements” are given special status in the *Act*. Once signed by complaining employees and their employers, settlement agreements take the place of a Director’s determination.<sup>31</sup> In the event that an employer does not comply with the terms of such a settlement the affected employee cannot then ask the Employment Standards Branch to issue a violation determination to force compliance with the *Act* in full. It is only the settlement agreement that is enforceable

Officers were cautious in their use of mediated settlements because of their potential to become a means to undermine the *Act*, since most employees acted on their own without counsel or representation, whereas employers were often accompanied by legal counsel and exerted their greater power.

in the court. Therefore, if an employee settled a complaint in return for compensation that was less than set out in the *Act* (which is typically the case), he or she will have waived their right to receive what the *Act* prescribes if their employer reneges on the settlement agreement.

According to a former senior Branch Officer, the new formal status for settlement agreements is a huge change because the incentive for employers to settle quickly is removed. And, more significantly, because full Branch investigations are no longer mandated, the door is opened to intimidation of employees by employers and the Branch, as the choice of complainants is now to take a settlement or risk getting nothing at all if they cannot prove conclusively that their claims are valid.<sup>32</sup>

Because of imbalance in the power relationship between employees and their employers the new formalized mediation and settlement agreement process effectively places employees in a more vulnerable position, receiving less protection than was previously the case.

## Wage Recovery

There have been three significant changes to the *Act* with respect to limits on employer liability for wages required to be paid:

- The limit on retroactive liability for wages required to be paid by an employer under a Director’s determination has been reduced from two years from the date of complaint or determination to six months. This change alone, because it significantly reduces the risk of penalty an employer must pay for violating the *Act*, will further encourage violations by unscrupulous employers.
- Directors or officers of companies no longer bear personal liability for wages owed to employees if the company is in bankruptcy or receivership. In 2001 alone, the Employment Standards Branch collected \$500,000 for employees by means of the director’s liability provision, which was repealed in 2002.



- Farm producers are no longer liable for the unpaid wages of farmworkers if the farmworkers are employed by licensed farm labour contractors who have been paid by the producer for the work performed.

This lowering of wage protections for farmworkers is one of several changes to the *Act* and *Regulation* (detailed below) that significantly lowered standards for an already highly vulnerable group of workers. As former Employment Standards Branch Policy Advisor Graeme Moore put it, “in no other field of employment are workers so vulnerable.”<sup>33</sup>

The vulnerability of farmworkers derives from the fact that they are often immigrants of colour or are temporary migrant workers, among the lowest paid in Canada, lacking in employment security due to the seasonal and/or casual nature of their employment, subject to very poor working conditions, exempted from or subject to lower employment standards, income tax and employment insurance laws, and often suffer from inadequate law enforcement.<sup>34</sup>

## Appeals

Significant changes were made to Part 13 of the *Act* regarding the right to appeal a decision of the Director of Employment Standards to the Employment Standards Tribunal with respect to a complaint, a determination of violation, or a penalty.

First, the *Act* now permits the charging of a fee to persons wanting to appeal a decision of the Director. Second, where previously there were no specific restrictions in making an appeal, the grounds for appeal have now been substantially restricted to errors in law, failure to observe principles of natural justice, and new evidence becoming available. Third, the Employment Standards Tribunal has new power to dismiss an appeal without a hearing where at least one of the new restrictive grounds for appeal has not been met.

All of these changes create further barriers to unrepresented workers in pursuit of their employment rights.



# Regulation Change by Executive Order

Over the period July 2001 to June 2004 there were 12 provincial government executive Orders in Council to make approximately 40 changes to the *Employment Standards Regulation*.<sup>35</sup> Of those 40 changes, 34 were assessed to have either a negative effect on workers (the majority), or to be administratively neutral. And only six were assessed to be positive.

The assessed positive changes to the *Regulation* covered the following:

- Increased monetary penalties for employers found to be in violation of the *Act*: from \$0 to \$500 for the first offense; \$2,500 for a second offense of the same provision within three years (previously \$150 multiplied by the number of employees affected); and \$10,000 for a third offense of the same provision within one year (previously \$250 multiplied by the number of employees affected).
- Technical and administrative support employees of high technology companies are no longer excluded from the *Act's* provisions regarding hours of work, overtime and statutory holidays, as are “high technology professionals” working for the same companies. In 1999, the previous government, as part of a package of exclusions by regulation for the benefit of high technology companies, had excluded all “high tech” employees, including technical and administrative support staff.
- The overtime rates for silviculture workers are brought into alignment with the *Act's* general overtime provisions.

- The statutory holiday pay for silviculture workers can no longer be based on an average day's pay for the previous four weeks and must be equal to 3.6 per cent of gross earnings on each paycheque.
- Silviculture workers must now agree in writing before an employer can charge for lodging provided.
- So-called 'high end' commissioned salespeople are no longer exempt from statutory holiday provisions and must now be paid at least the minimum wage for their first 160 hours of work each month.

Once again, however, as we will see, most of the regulatory changes were of benefit to employers.

## Exclusions and Variances

There were already over 100 exclusions from the *Act* under the *Employment Standards Regulation* prior to 2001. Between 2001 and 2004, the *Regulation* was changed several times to either expand the definition of work or occupations excluded from all or some of the minimum standards of the *Act*, or to increase the number of jobs or occupations excluded from all or parts of the *Act*.

The definition of farmworker was broadened significantly to include more jobs, such as selling product during the normal harvest season and initial washing, cleaning, grading or packing. Farmworkers as a whole were then excluded from the hours of work, overtime and statutory holiday provisions of the *Act*.

The definitions of long haul truck driver, high technology professional, and manager were also expanded for the purpose of exclusion from core provisions of the *Act*.

Foster care providers were added to the list of totally excluded occupations; fish farm workers and livestock brand inspectors are newly excluded from the hours of work and overtime provisions; specified commission salespersons are newly excluded from the hours of work, overtime and statutory holiday provisions; oil and gas field workers, short haul truck drivers and surface miners are newly excluded from the core provisions of the *Act*; and police recruits are newly excluded from the prohibition against deduction from wages of employers' costs for training.

In addition, overtime rates of pay were reduced for several categories of oil and gas field workers working 24 hour shifts, long haul truck drivers working more than 60 hours per week, taxi drivers working more than 120 hours within a two week period, and silviculture workers required to work on a statutory holiday.

## Minimum Wages

There have been two significant changes to the *Regulation* to lower the statutory minimum wage for two particularly vulnerable groups of workers: new entrants to the labour market and farmworkers.

The first was made on November 20, 2001, just as the Ministry of Skills Development and Labour was starting its internal review and public consultations for changes to the *Act* and *Regulation*. The *First Job/Entry Level Wage Regulation* amended Section 15 of the *Employment Standards Regulation* to create a new \$6 per hour minimum wage for employees who: a) had "no paid employment experience before November 15, 2001" and b) have "500 or fewer hours of cumulative paid employment experience with one or more employers."

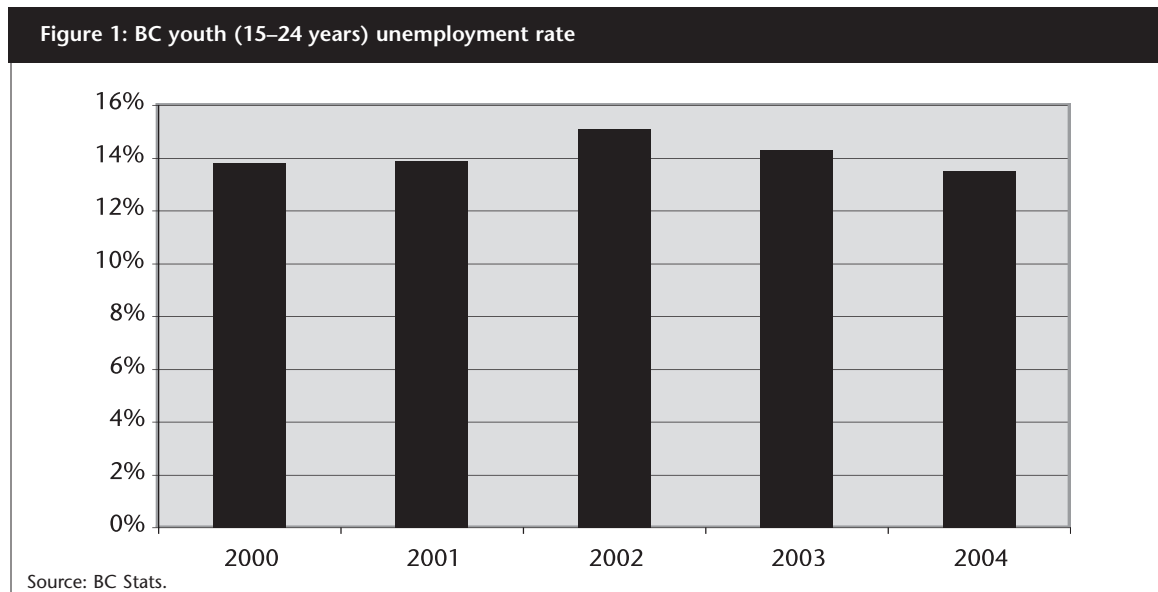
This new provision essentially excludes a defined category of employee from the general minimum wage of \$8 per hour based on their paid employment experience. The consequent \$2 (25 per cent) wage difference for inexperienced workers is unprecedented in Canadian law. Only one other province has a two-tier minimum wage for inexperienced workers, and the wage differential is much smaller; in Nova Scotia the minimum wage for inexperienced workers is \$6.05 per hour, and for experienced \$6.50 – a difference of only 45 cents (7 per cent).

Another significant difference in the Nova Scotia legislation is that the lower minimum wage applies only to the first three months of employment, regardless of the hours worked during that period. Under the new BC legislation, the lower minimum wage applies until 500 hours have been worked – which means it could apply for between three and a half months for a full-time employee and up to a year or more for two hours of work per week in part-time employment.

A significant feature of BC's \$6 minimum wage is that the federal labour code (which regulates employment under federal jurisdiction, such as transportation and communications) expressly prohibits discrimination in the minimum wage based on work experience. Under Part III of the *Canada Labour Code* the provincial minimum wage regulation generally applies to federally regulated employment in each province; however, it does not adopt the \$6 *First Job/Entry Level* wage in British Columbia, as the federal *Code* (Section 178) requires that all workers be paid the \$8 minimum wage “regardless of occupation, status or work experience.”<sup>36</sup>

While BC's *First Job/Entry Level Wage Regulation* makes no reference to youth or young workers being the target, in announcing this new regulation on October 29, 2001, then-Minister of Skills Development and Labour Graham Bruce claimed that the lower starting rate was necessary to reduce BC's youth unemployment: “We committed in our New Era platform to focus on reducing BC's youth unemployment which is the highest in Canada. We are honouring that commitment through a ‘first job’ rate for new employees entering the workforce. The first job rate will increase youth employment by giving employers incentives to hire people without experience.”<sup>37</sup> However, this justification is not supported by statistics on youth unemployment since the introduction of the \$6 ‘first job’ minimum wage.

The statistic on youth unemployment referenced in the Minister's October 29, 2001 statement was the BC unemployment rate for 15 to 24 year olds, which as of September 2001 was 13.6 per cent. The youth unemployment rate for all of 2001 was 13.9 per cent. Interestingly, in the two years that immediately followed, the youth unemployment rate actually increased, as shown in Figure 1.



In the five-year period covered by Figure 1 the youth unemployment rate actually peaked in May 2004 at 16 per cent. The decline in youth unemployment for all of 2004 (which occurred primarily in the last five months) took place three years after introduction of the \$6 ‘first job’ minimum wage. However, while the \$6 minimum wage could have had an influence on declining youth unemployment in late 2004, it is highly improbable in light of the fact that there was a more rapid decline in the unemployment rate for the 24 to 44 age group that same year, which went from 7.3 per cent in 2003 to 6.3 per cent in 2004 – a full percentage point decline compared to a decline of only 0.8 percentage points for youth.<sup>38</sup>

To the extent that the \$6 *First Job/Entry Level Wage* is intended to apply primarily to young workers, it is important to recall that the Thompson Inquiry addressed the appropriateness of a youth minimum wage. At the time, BC was one of only three provinces to have retained a lower minimum wage for young workers. Five other provinces had recently eliminated their youth minimum wage out of concern that such discrimination based on age violates the *Charter of Rights and Freedoms*.<sup>39</sup>

Thompson received representations from business during the inquiry in 1993 (primarily fast food operators) requesting that a “training wage” be established for newly hired workers with a wage differential of just 50 cents per hour for a maximum of 90 days. However, Thompson found that most employers used the general minimum wage as a training wage, and that to create a lower minimum wage for a large number of workers who receive gratuities “would create the risk of serious injustice for many workers.”<sup>40</sup> He recommended that BC eliminate the youth minimum wage, which it did in 1995.

Because the new \$6 *First Job/Entry Level Wage* is not restricted to young workers, its application and negative effects are far wider than any previous discriminatory minimum wage policy. It also potentially impacts immigrant workers, those unable to provide ‘material proof’ of previous experience (records of employment, pay stubs or T4 slips, or written confirmation from previous employers), and women who are late entrants to the labour force or who have had a long absence from it. In addition, the \$2 wage differential is significant enough to encourage unscrupulous employers to continually replace employees who have reached their first 500 hours with new inexperienced workers.

There are several other unique, inconsistent and complicating features of the \$6 minimum wage regulation. No rigorous regulatory impact assessment was done before it was ordered into law, as has usually been the case with previous significant changes to the minimum wage regulation.<sup>41</sup> There has been no Employment Standards Branch monitoring or tracking of complaints with respect to the \$6 wage to assess its effects on workers.<sup>42</sup> There are problems with the ambiguity and inconsistency of language in the *Regulation*, such as what constitutes “paid employment experience” and what paid time is counted in the 500 hours.<sup>43</sup>

The \$6 *First Job/Entry Level Wage* is particularly troubling when viewed in the larger context of other changes to Employment Standards that negatively impact vulnerable workers, in particular the lowering of the minimum age of employment from 15 to 12.

The second group of vulnerable workers targeted for a lower minimum wage was farmworkers – specifically hand-harvesters who work on a piecework basis to harvest fruit, vegetable or berry crops, and who tend to be concentrated in the Fraser Valley, the Okanagan Valley, and Southern Vancouver Island. According to a former Employment Standards Officer and Program Advisor with 20 years of enforcement

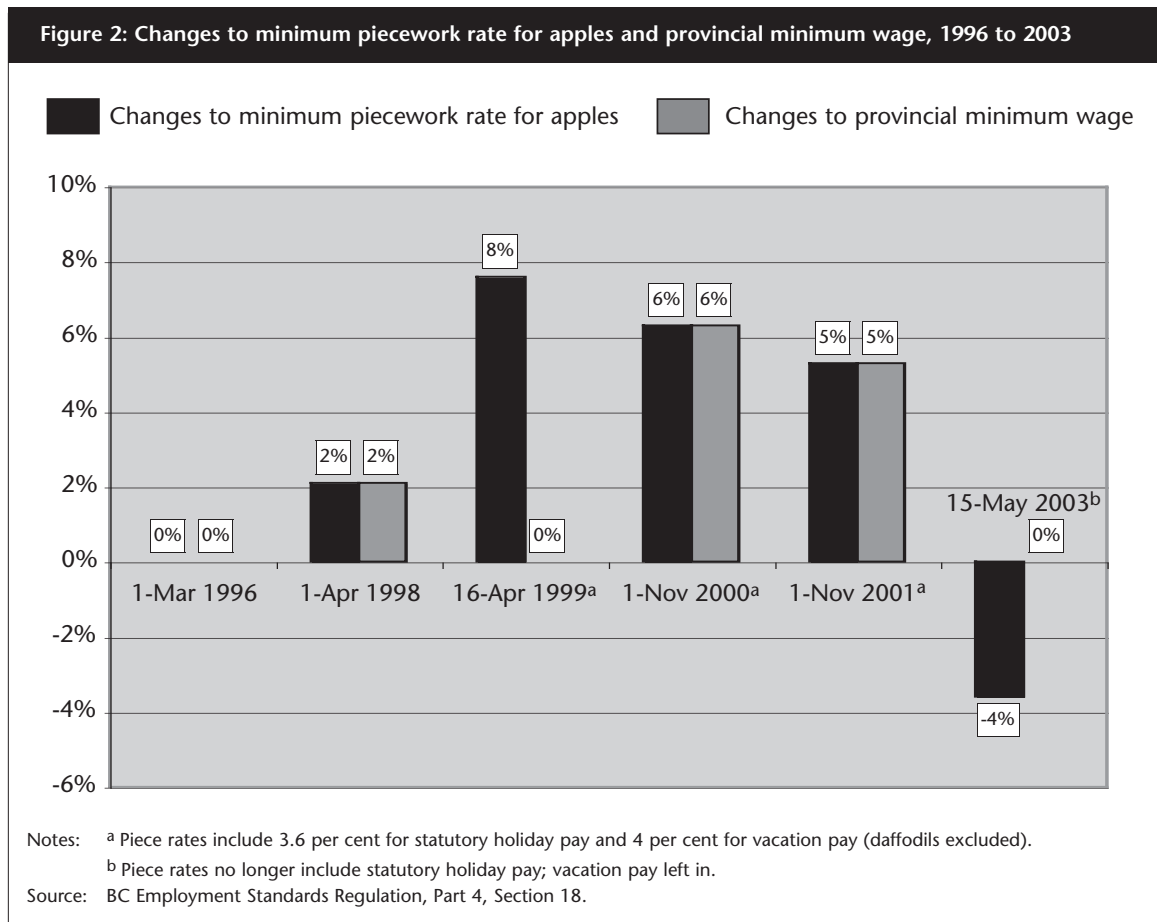
Because the new \$6 First Job/Entry Level Wage is not restricted to young workers, its application and negative effects are far wider than any previous discriminatory minimum wage policy, with potential impacts on immigrant workers and women.

experience, hand-harvesters of Fraser Valley berry crops are largely drawn (about 98 per cent) from the Lower Mainland's Indo-Canadian community. They tend to be middle-aged and older, have resided in Canada under five years, and have limited ability to read or speak English. While some reside on the farms where they work, most reside in suburban homes and are transported to their workplaces by their employers, farm labour contractors.<sup>44</sup>

Hand-harvesters are not covered by the \$8 hourly minimum wage but by a regulation schedule of minimum piecework rates according to the kind of harvesting in which they are engaged. In 1995 vacation pay at 4 per cent and statutory holiday pay at 3.6 per cent was made applicable to minimum piece rates in the *Regulation*. In April 1999 the pro-rated 4 per cent for vacation pay and pro-rated 3.6 per cent for statutory holiday pay was rolled into the minimum piecework rates in the schedule, resulting in a total increase in minimum piece rates of 7.6 per cent. However, in May 2003 the *Regulation* was changed to eliminate statutory holiday pay for farmworkers and as a consequence the minimum piece rate schedule for hand-harvesters was reduced by 3.6 per cent.

Appendix 1 details all hand-harvester minimum piecework rates and general minimum wage rates in effect under Section 18 of the *Regulation* from 1995 to 2003. The historical data show that, except for 1999 when pro-rated vacation pay and statutory holiday pay were rolled into hand-harvester piecework rates, hand-harvester minimum rates were increased annually by approximately the same percentage as the general minimum wage from 1998 to 2001. However, there have been no increases in minimum wages since November 2001 – the longest period without an increase for over 10 years.

Figure 2 provides an example, comparing hand-harvester minimum piecework range for apples to the general minimum wage.



# Changes to Administration and Enforcement

## Program, Budget and Staffing Reductions

Radical reductions in Employment Standards Branch budgets and staffing resources since 2001 have had a significant negative impact on the ability of the Branch to effectively administer and enforce the minimum requirements of the *Act*.

Appendix 2 shows detailed annual Employment Standards Branch budgets, staffing, and office resources and distribution from 1994/95 to 2004/05. Highlights from this data are presented in Figure 3. The government's sweeping budget cuts and one third across-the-board staffing reductions to the public sector did not start until the 2002/03 fiscal year. However, staffing reductions began in Employment Standards in the 2001/02 fiscal year due to the termination of the Skills Development and Fair Wage Compliance Program (SD&FWC). Fifteen Employment Standards Branch positions were eliminated at that time.

The SD&FWC program had been focussed on enforcement of the *Skills Development and Fair Wage Act* in relation to construction purchased or funded by the provincial government. However, the Branch staff involved were able to extend the scope of their investigations to enforce more generally and effectively the *Employment Standards Act* in the construction industry – which is notorious for non-compliance.

The data in Appendix 2 and Figure 2 shows that while Employment Standards Branch staffing was reduced by a third (from 151 to 109) over the 2001 to 2004 period, the budget reduction was only 16 per cent, reflecting in all likelihood the short-term added costs of early retirement buyouts, staff layoffs and office closures. In addition, the cuts occurred in the context of a growing number of both workers and workplaces (as shown in the bottom two lines of Appendix 2), which means fewer staff are expected to protect a larger workforce.

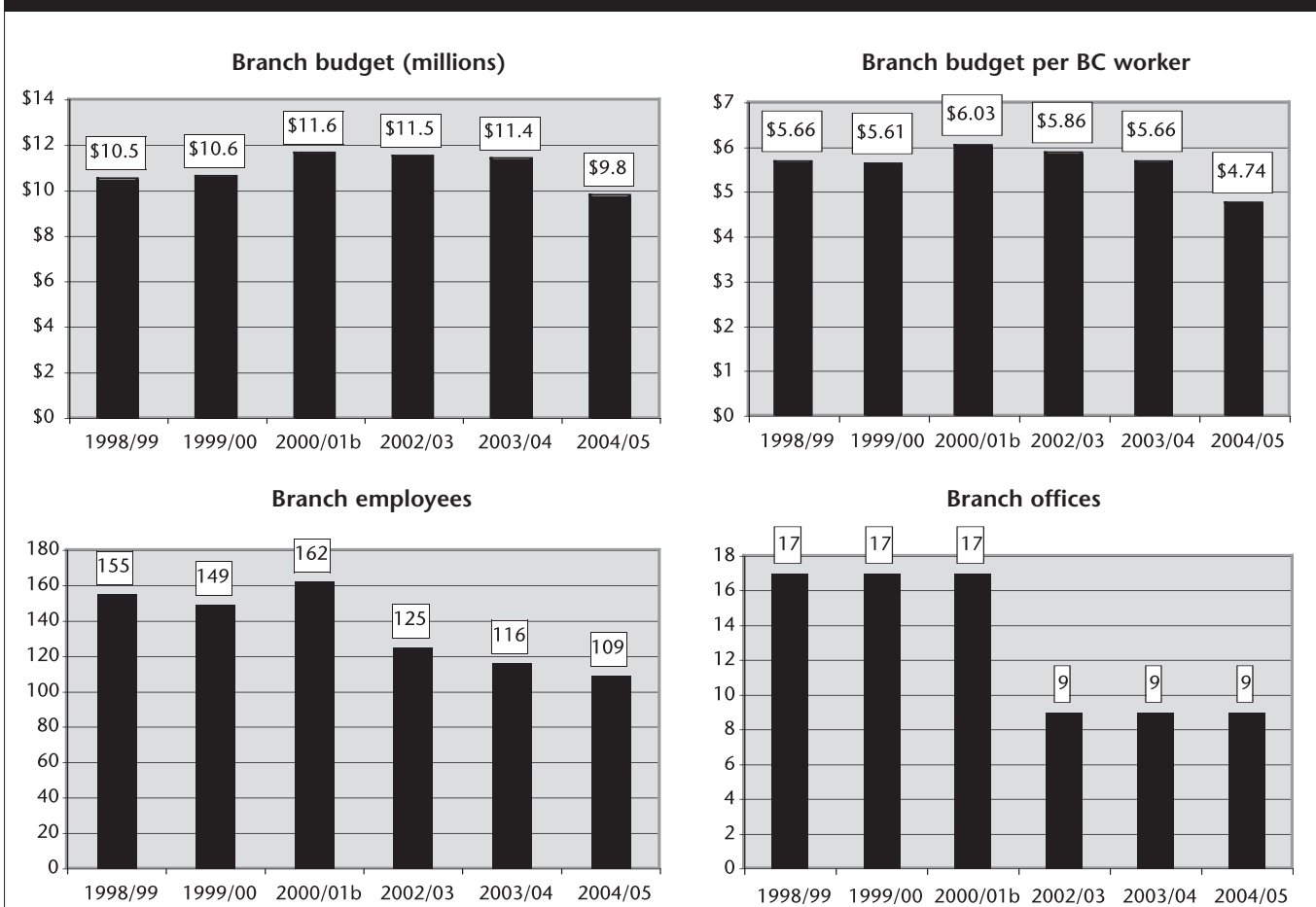
The data also shows that the number of Branch offices province-wide was reduced from 17 to 9 (a 47 per cent reduction) in the first year of the service reduction plan.<sup>45</sup> On a regional basis the office reductions were even more dramatic and uneven. In the Thompson-Okanagan region, two-thirds of the

Branch's offices were closed, including in the significant urban centres of Kamloops and Penticton, leaving only one office for the entire region. In the Kootenay-Boundary region one of two offices was closed (Cranbrook). On Vancouver Island two offices were closed in the forest industry centres of Duncan and Courtney, leaving only one office for the south island and one for the central and northern areas. In the Lower Mainland, only two offices are left after closures in downtown Vancouver, Port Coquitlam and Abbotsford (the heart of BC's agricultural industry).

Of particular significance to the effective enforcement of employment standards in the agricultural sector has been a 73 per cent reduction in enforcement staff assigned to the Agricultural Compliance Team – from 11 to three. The team was established in 1997 to follow up on the Thompson Commission finding of high levels of non-compliance in farm labour contracting. Moore describes its highly successful efforts in reducing non-compliance over the 1997 to 2001 period. He also analyses the negative effects of ACT's staffing reductions for agricultural employment in the post-2001 period.<sup>46</sup>

These office closures and staff reductions have had a significant negative impact on employee access to Employment Standards information and enforcement services, and have significantly reduced (if not eliminated) pro-active compliance investigation by Branch staff in large areas of the province. As a result, the Branch is almost exclusively operating in a rigid, office-based, complaints processing mode.<sup>47</sup>

Figure 3: Changes to the Employment Standards Branch, 1998/99 to 2004/05<sup>a</sup>



Notes: <sup>a</sup> Detailed data is available in Appendix 1. <sup>b</sup> Pre-New Era base fiscal year.

Sources: BC Ministry of Skills Development and Labour Annual Reports and Annual Service Plan Reports. BC STATS, Employment by Industry for BC, Development Region and Metro Areas and Establishment Counts by Employee Size.

## Administrative Measures and Procedural Changes

Significant employment standards changes have gone beyond legislation, regulation and the allocation of administrative resources. Faced with a large backlog of complaints due to under-resourcing in the years prior to 2001, and in anticipation that dramatic reductions to staffing would be made post-2001, changes were made to the *Act* and Branch administrative policies to consciously reduce the number of complaints received, and to obtain greater Branch control over complaints required to be processed.

Procedures were set in place that significantly reduced field/workplace investigations and audits by Branch officers and virtually confined them to office activities. These procedures expedite the resolution of complaints through a new, virtually compulsory, two-stage ‘mediation’ and ‘adjudication’ process designed to reduce to a minimum the requirement to issue ‘determinations’ of violation. As a result, a new bureaucratic message was subtly conveyed to staff to focus on ‘getting the determinations numbers down.’<sup>48</sup>

Reducing the number of complaints received by the Branch was achieved through a combination of measures that “restrict access at the gate.” These include:

- employees being less informed of their rights (which are no longer required to be posted in workplaces);
- office closures;
- conditional acceptance of written complaints (for example, if an officer deems that a complainant did not use the self-help kit before filing a complaint);
- forced “self reliance” for complainants;
- initial action instructions and lengthy complaint forms available only in English;
- access to important information, instructions and forms largely limited to Internet access on the Branch website;
- ‘embedding’ Employment Standards Officers in the offices of employer associations to handle complaints in industries targeted for greater compliance; and
- the introduction of so-called “partnerships” with employer associations.

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The most restrictive of these gate-keeping mechanisms is the requirement that employees be ‘self reliant’ and confront their employers with their claims of violation of the *Act*. Except in “very unusual circumstances” (e.g. maternity leave issues or when there is fewer than 30 days left in the six-month time period allowed for filing a complaint) the Employment Standards Branch will not accept complaints unless a ‘Self-Help Kit’ has been used by an employee to file a claim directly with their employer.

The ‘Self-Help Kit’ is a 16-page document, printed only in English, and available only at government offices or on the government’s website. Part of the “Kit” also requires the complaining employee to complete a complicated claim form to calculate what they think the employer owes them. According to one Employment Standards Officer in a northern Branch office, the introduction of the new Self-Help Kit in 2002 had an immediate effect “like the turning off of a tap.” The number of complaints received by the Branch office dropped by over 75 per cent within a matter of months. In addition, according to the same officer, there are problems with the ‘Kit’, such as the overtime pay calculation claim form, which is incorrect and causes employees to under-estimate what they are owed.

If an employee has not been deterred by having to use the ‘Self-Help Kit’ – let alone the potential fear of having to confront, alone, their employer in order to accuse them of having violated the law –



they can then file a written complaint with the Employment Standards Branch. Once a complaint has been accepted by the Branch, the employee must participate in a new two-stage “dispute resolution” process. The first stage involves a ‘mediation session’ where an officer attempts to have the complaining employee and her/his employer reach a “settlement agreement” (which does not have to provide payments or benefits prescribed in the *Act*). Failing such a settlement, the employer and employee must participate in a formal ‘adjudication hearing’ presided over by an Industrial Relations Officer. If either the employee or the employer cannot attend a mediation session or an adjudication hearing at a Branch office during a normal Branch working day, Monday to Friday, the mediation or hearing is conducted by conference phone or video conference.

Due to reduced staffing and the closure of five of 11 Branch offices, outside of the Lower Mainland and Southern Vancouver Island, there is increasing use of distance mediation and adjudication. The distance adjudication by telephone process, according to Officers interviewed, raises a number of serious questions with respect to fairness, especially for vulnerable workers.

# The Impact of Changes on Complaints and Compliance

Without effective enforcement, employment standards are, for all practical purposes, meaningless. However, little data is available, in BC or nationally, on employer compliance with employment standards.<sup>49</sup>

A survey of employers operating under the *Canada Labour Code*, conducted for Human Resources Development Canada in 1997, found widespread non-compliance with Part III of the *Code* in a number of areas, particularly with respect to hours of work and severance pay. In particular sectors the level of non-compliance was found to be at 45 to 50 per cent of workplaces<sup>50</sup>. A 1987 Ontario Task Force on Hours of Work and Overtime found a non-compliance rate of 96 per cent with respect to weekly hours of work.<sup>51</sup> And according to Moore, in British Columbia, the Employment Standards Branch found from 59 agricultural worksite visits in 2003 that 69 per cent of farm labour contractors and 36 per cent of farm producers were violating core provisions of the *Employment Standards Act*.<sup>52</sup>

While many tools have been devised to ensure or increase compliance, most jurisdictions in Canada do not have hard data on the impact of their initiatives.<sup>53</sup> This is certainly true of British Columbia, where there has been no data collection or assessment by the provincial government of its changes to employment standards.

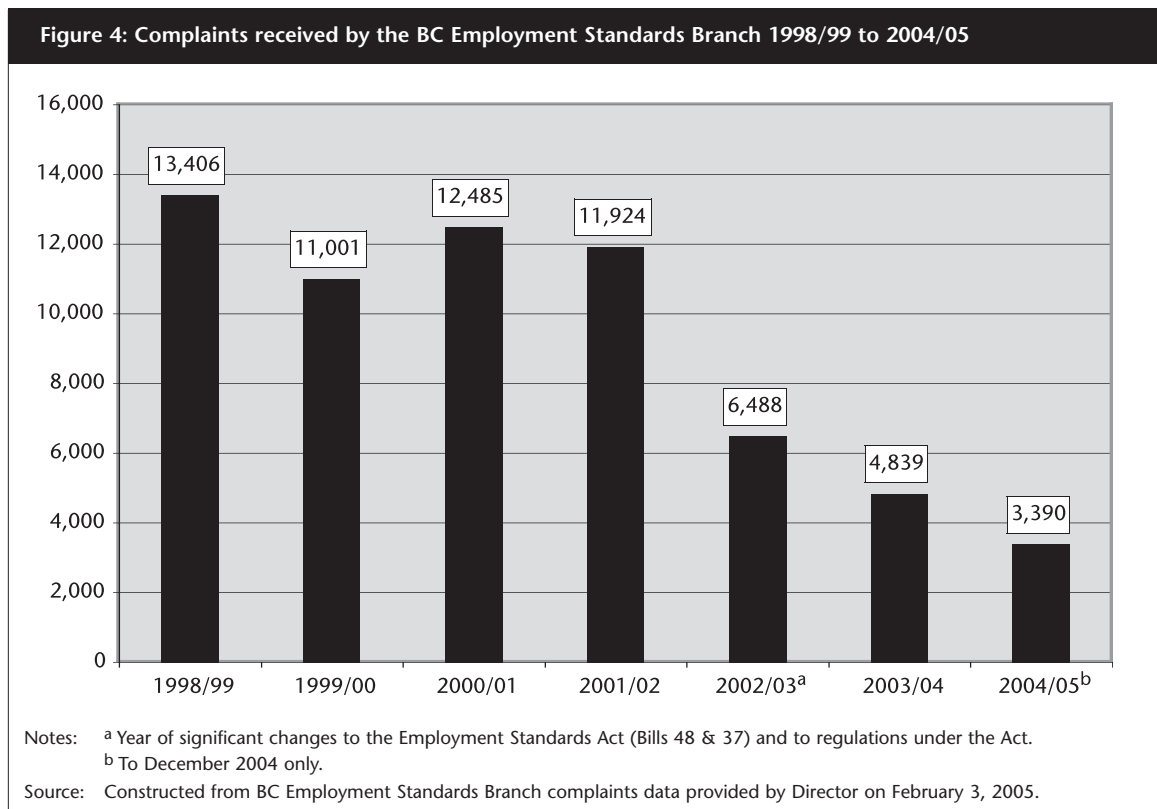
However, British Columbia does have sound data and analysis from before 2001 that shows the effectiveness of an active and coordinated multi-agency auditing of notoriously non-compliant sectors and employer groups. The Fair Wage Compliance Team (which investigated construction sites) and the

Agricultural Compliance Team – both initiated in the late 1990s by the Employment Standards Branch – were dramatically effective in uncovering and significantly reducing employment standards non-compliance. As a result, employers in these sectors put tremendous pressure on the government to abandon the use of active audits. Former Branch Policy Advisor Graeme Moore has produced a comprehensive report describing the design and effect of active auditing as an efficient approach to effective enforcement.<sup>54</sup> Under the current government, these active enforcement measures were removed and the Branch retreated to focus on the processing of individual complaints and “partnerships” with certain employer associations.

According to recent research by the Canadian Policy Research Networks and The Institute of Public Policy of Canada, the main mechanism used by most labour departments and commissions charged with enforcing employment standards is responding to individual inquiries and complaints. However, the CPRN-IPPC study found that the practice of dealing with compliance one case at a time is expensive and risks overloading the available capacity. This approach also fails to provide the same deterrent as surprise audits. Moreover, resolving claims quickly is not the same as achieving compliance, since vulnerable workers will often be reluctant to complain. According to the research, employment standards are not well understood, or not acted upon, because governments are seen as ineffective in dealing with abuses.

Despite the lack of broader data on compliance, it is of analytical value to examine the impact of the government’s changes to BC Employment Standards based on the limited data maintained by the Employment Standards Branch. Appendix 3 shows historical data on complaints accepted by the BC Employment Standards Branch for the period 1996/97 to 2004/05. Highlights from this data are presented in Figure 4.

According to the Branch, the complaints data for 1996/97 and 1997/98 is not a reliable base of comparison because the numbers include Branch actions that did not necessarily stem from complaints. Therefore the most reliable data for historical comparison purposes is suggested as starting in the 1998/99



fiscal year, when 13,406 violation complaints were received. Of that total, 4,331 or 32.3 per cent were withdrawn or abandoned before a “determination” was made by the Branch. Of the 9,075 determinations made only 7.6 per cent made a finding of compliance while 92.4 per cent found non-compliance. Consequently, of the original 13,406 complaints received 62.5 per cent were found to be valid; however, only two-thirds were tested as to their validity because the other third were withdrawn or abandoned. Therefore, it could be said with reasonable certainty the between 63 per cent and 92 per cent of all employee complaints involved actual violations of the *Employment Standards Act*.

Fast forward to the 2002/03 fiscal year when Bills 48 and 37 were proclaimed into law, along with many changes to the *Employment Standards Regulation*. Only 6,488 complaints were accepted by the Employment Standards Branch – an immediate year over year reduction from 2001/02 of 46 per cent. By 2003/04, once the new laws, regulations and procedures had been in effect for a full year, the number of complaints accepted by the Branch fell to 4,839 – representing a 59.4 per cent decrease from 2001/02 (the year before the changes were implemented), and a huge 64 per cent reduction from the 13,406 complaints accepted in 1998/99. While the proportion of total claims withdrawn or abandoned in 2003 was not significantly different than in 1998/99, there was a spike in this ratio to 41 per cent in the first year of the changes (2002), reinforcing an assessment that the new *Act* and *Regulation* had a chilling effect on complaining employees. Overall, it stands to reason that those workers with the fortitude to take a complaint this far would be unlikely to abandon their grievance at this stage.

The data showing a dramatic decline in employment standards complaints is open to a number of interpretations. What is not credible or supported by analysis, however, is the Ministry of Skills Development and Labour’s ambiguous explanation in its 2002/03 Annual Service Plan Report:

*A decline in the number of complaints could be attributable to a number of factors, such as the improved effectiveness and efficiency of the self-help kits.*

There are at least two ways to interpret this Ministry statement, one implausible and one plausible. An implausible interpretation is that the Self-Help Kits helped large numbers of complaining employees obtain the rights and benefits to which they were entitled to such an extent that the majority simply had to ask their employers to change their actions. As one Employment Standards Officer commented, it is highly unlikely that these employers changed their behaviour toward complaining employees overnight. In years prior to the changes that were brought in starting in 2002/03, two-thirds of all complaints received resulted in an investigational determination of violation. Significantly, less than one third were withdrawn or abandoned due to resolution.

The far more plausible interpretation is that without the critical support and authority of Employment Standards Officers, large numbers of employees who feel their rights have been violated have simply given up on the government system of enforcement and chosen not to make complaints – either out of fear of reprisal, or because they were unable to access or use the new Self-Help Kit.

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# Conclusion

After the first round of substantial changes were made to the BC *Employment Standards Act* in May 2002, and the government announcement that 45 Employment Standards Branch positions were to be eliminated and one half of the Branch's offices were to be closed, several senior staff and long time enforcement officers with the Branch resigned in protest – some quietly, others not so quietly.

One regional manager was so incensed with the government's actions that he published the reasons for his resignation in the *Vancouver Sun*. This manager stated that while "it was well understood that, with election of the BC Liberals, there would be substantial changes [to the *Act*], what was not clear was that these changes would fundamentally change the nature of our social contract."<sup>55</sup> He reported that the Employment Standards Branch was being decimated and that staff morale was at an all time low. He also reported that the government was not only changing the substance of the *Act*, but also its approach to enforcement. He assessed that while the government talked about protecting vulnerable workers, its actions would have the opposite effect. He concluded his public statement with a scathing rebuke of the government's actions:

*I always believed that the current employment standards legislation and branch policies, imperfect as they are, constituted an honest attempt to provide reasonable standards for employers and employees alike. This is no longer the case. The intent of this government is clear – create a façade of minimum standards that masks the reality of rampant exploitation.*<sup>56</sup>

Employment standards legislation is widely recognized as a significant instrument of public policy to provide for the economic security of those workers not represented by unions who are disadvantaged and vulnerable as a result of the inherent inequality they experience in the employment relationship, and the undue exploitation that tends to result.

This paper establishes a baseline of information with respect to BC's employment standards regime as of 2001. The provincial government's drive to create 'flexible' employment standards regulation appears, on a preliminary basis, not to meet the test of providing greater protection and employment security for vulnerable workers than was previously in force. In some cases, the changes are extremely negative, and in some instances unprecedented reductions have been made.

The exclusion of all employees under a collective agreement from coverage of core provisions of the *Act*, the establishment of a first job/entry level minimum wage \$2 per hour less than the general minimum wage, and the elimination of government supervision of the employment of children between the ages of 12 and 15 establish minimum standards of protection that are lower than anywhere else in Canada.

Many other changes have been identified in this paper as having clearly negative consequences or implications for vulnerable workers: the end of posting of workplace rules; the reduction of minimum call-in pay; reductions to minimum overtime pay; individualized "hours averaging agreements"; reduced statutory holiday provisions; significantly reduced employer liability for wage payment violations; elimination of company directors' liability for wages owed; restrictions on Employment Standards Branch acceptance of violation complaints to those who have first used an English-only self-help form to confront their employer with their claim; introduction of formal Branch conducted adjudication hearings; a 33 per cent reduction in enforcement staff and a 47 per cent reduction in enforcement offices; and the termination of active random auditing of employers in sectors with a history or pattern of non-compliance.

Sweeping reductions and changes to the enforcement program in BC have had a significant negative affect on the ability of BC workers to become aware of their rights in the workplace, to complain of violations of their rights, and to obtain fair treatment in the process of pursuing complaints and having their complaints adequately investigated.

It is becoming widely recognized across Canada that effective enforcement of employment standards laws have been a neglected area in public policy and that more effective enforcement requires more resources and new policies and programs. In BC a more effective enforcement regime would require that the provincial government:

- increase employment standards enforcement staffing;
- re-establish Employment Standards Branch offices throughout the province to provide greater, more equitable access to in-person assistance, complaints processing, investigations and adjudication procedures;
- translate all public information and complaints filing instructions into at least Chinese and Punjabi, as is done by the Workers' Compensation Board;
- re-establish a wide-scale, pro-active program of random workplace audit inspections;
- reactivate and restore staffing for the Agricultural Compliance Team;
- work with other levels of government to re-establish in agriculture and construction, and expand to other notoriously non-compliant sectors, joint workplace investigations by teams of investigators from several federal, provincial and municipal enforcement agencies such as the Employment Insurance Commission, Canada Customs and Revenue Agency, the Workers' Compensation Board, the Employment Standards Branch, and the RCMP;
- establish an independent workers' advisers program similar to that established under the *Workers' Compensation Act*;

Sweeping reductions and changes to the enforcement program in BC have had a significant negative affect on the ability of BC workers to become aware of their rights in the workplace, to complain of violations of their rights, and to obtain fair treatment in the process of pursuing complaints and having their complaints adequately investigated.

- provide funding support to non-profit organizations willing to provide vulnerable workers with employment standards education, translation and representation/advocacy services; and
- engage in popular employment standards awareness education through mass media advertising and in-school programs, similar in style to those conducted by other government agencies to promote training in trades, expand awareness of workplace health and safety issues and regulations, and warn youth of the long-term hazards of smoking.

Other in-depth studies through the CCPA-SFU Economic Security Project's employment standards stream will monitor and assess the longer term effects of these employment standards regime changes on the economic security of vulnerable workers.

The analysis of this paper confirms, on a preliminary basis for BC at least, that the finding of Kerry Rittich and others that employment standards reforms that reflect employers demands for greater flexibility and lower labour market costs, and not the employees' needs for more protection and security, have the effect of intensifying the vulnerability of workers. And that rather than ameliorate workplace vulnerability, such reforms increase the disadvantage that workers experience.<sup>57</sup>

# Notes

- <sup>1</sup> The BC Liberal Party's 2001 election platform was headlined *A New Era for British Columbia*. Part of the platform promised *A New Era of Employment*, which included giving workers and employers greater flexibility in employment standards (Liberal Party of B.C., 2001:11).
- <sup>2</sup> This examination of the potential implications for increased labour market segmentation and employment polarization and vulnerability in BC expands on the approach of Mark Thomas (2002) in which he examines recent 'flexibility' and 'modernization' reforms to the Ontario *Employment Standards Act*. Thomas focuses his analysis on changes to the legislation and does not look at changes to the system of administration and enforcement, which this paper attempts to do in relation to BC employment standards.
- <sup>3</sup> *Employment Standards Act, R.S.B.C., 1996*, and *Employment Standards Regulation, B.C. Reg. 307/2000*.
- <sup>4</sup> *People and Jobs: A Study of the Canadian Labour Market*, Economic Council of Canada, Information Canada, Ottawa, 1976.
- <sup>5</sup> Malles, 1976:6.
- <sup>6</sup> Saunders, 2003:7.
- <sup>7</sup> Chaykowski, 2005. Chaykowski's analysis of worker vulnerability follows the spirit of Saunders' broad definition of labour market vulnerability referenced above.
- <sup>8</sup> Saunders and Maxwell, 2003:5.
- <sup>9</sup> Government of BC, Ministry of Skills Development and Labour. News release 2002-005, "New employment standards increase workplace flexibility", May 13, 2002.
- <sup>10</sup> BC Ministry of Skills Development and Labour, 2004:1.
- <sup>11</sup> Ibid.
- <sup>12</sup> BC Ministry of Skills Development and Labour, 2002e.
- <sup>13</sup> BC Ministry of Skills Development and Labour, 2002f.
- <sup>14</sup> BC Ministry of Skills Development and Labour, 2005.
- <sup>15</sup> See for example: Chaykowski, 2005; Fudge, Tucker and Vosko, 2002; Morissette and Picot, 2005; Rittich, 2004; Saunders, 2003; Saunders and Maxwell, 2003; Vosko, Zukewich and Cranford, 2003; Vosko, 2004; and Valee, 2004.
- <sup>16</sup> According to former Employment Standards Branch staff interviewed, the most significant changes to the *Act* were actually made in 1980 under a Social Credit government, without the benefit of an independent review or public consultations, when six separate laws were consolidated into the *Employment Standards Act* (see BC Ministry of Labour, 1980:22-25). See also Malles (1976:31-32) for a brief overview of the six employment standards laws in effect in British Columbia prior to their consolidation in 1980.
- <sup>17</sup> *Employment Standards Regulation, B.C. Reg. 307/2000*.
- <sup>18</sup> Malles, 1976:96.
- <sup>19</sup> *Bill 48 – Employment Standards Amendment Act, 2002, Ch. 42*.
- <sup>20</sup> *Bill 37 – Skills Development and Labour Statutes Amendment Act, 2003, Ch. 65*.
- <sup>21</sup> *Bill 56 – Administrative Tribunals Act, 2004, Ch. 45*.



- <sup>22</sup> Business Council of BC, 2001 and 2002.
- <sup>23</sup> Statistics Canada, 2004:60.
- <sup>24</sup> Professor Mark Thompson, University of British Columbia; David Ages, former Employment Standards Branch Regional Manager and subsequently Labour Relations Officer with the British Columbia Nurses Union; and Graeme Moore, former Industrial Relations Officer and Policy Advisor with the Employment Standards Branch.
- <sup>25</sup> Ages, 2002.
- <sup>26</sup> Luke and Moore, 2004.
- <sup>27</sup> Moore, Luke and Korth, 2004:2.
- <sup>28</sup> Irwin, McBride and Strubin, 2005.
- <sup>29</sup> Thompson, 1994:95.
- <sup>30</sup> Ages, 2002a.
- <sup>31</sup> A “determination” under the *Act* is a decision required by the Director of Employment Standards in the administration and enforcement of specific sections of the *Act*.
- <sup>32</sup> Ages, 2002a.
- <sup>33</sup> Johnson, 2004:3.
- <sup>34</sup> See Thompson, 1994:41-53; Johnson, 2004; Moore, 2004.
- <sup>35</sup> BC Reg. 177/2001; BC Reg. 261/2001; BC Reg. 298/2001; BC Reg. 70/2002; BC Reg. 108/2002; BC Reg. 307/2002; BC Reg. 118/2003; BC Reg. 195/2003; BC Reg. 375/2003; BC Reg. 431/2003; BC Reg. 432/2003; and BC Reg. 257/2004.
- <sup>36</sup> Written confirmation of this interpretation obtained from a Program Analyst with Human Resources and Skills Development Canada.
- <sup>37</sup> BC Ministry of Skills Development and Labour, 2001c.
- <sup>38</sup> For additional analysis of comparative statistical trends in youth unemployment in BC and all Canada see Irwin, McBride and Strubin, 2005:11-12.
- <sup>39</sup> At the time the youth minimum wage was 50 cents per hour below the general minimum wage for persons under 18.
- <sup>40</sup> *Ibid*, 88.
- <sup>41</sup> From interviews with former senior staff with the Employment Standards Branch.
- <sup>42</sup> Interview with Director of Employment Standards, February 3, 2005.
- <sup>43</sup> Former senior staff with the Branch attribute the poor language of the *Regulation* to the fact that it was not drafted by experienced Branch staff, but by staff in the new Premier’s office immediately following his May 2001 election. Other Employment Standards Branch officers interviewed said that when the new Regulation was announced there were quite a lot of inquiries, mostly from small, family-run businesses in retail and restaurants, requesting clarification of how the regulation applied. The impression of these officers was that, regardless of the poor language, it did not have any perceptible employment effects.
- <sup>44</sup> Moore, 2004.
- <sup>45</sup> With nine regional offices the BC Employment Standards Branch now has fewer offices than the employment standards branch in Alberta, where 10 offices serve 15 per cent fewer workers.
- <sup>46</sup> Moore, 2004:23-26.

- <sup>47</sup> This has been confirmed through interviews with a number of Employment Standards Officers.
- <sup>48</sup> Paraphrasing an Employment Standards Branch Officer interviewed.
- <sup>49</sup> See the recent joint research by the Canadian Policy Research Networks and The Institute of Public Policy of Canada (Saunders and Dutil, 2005).
- <sup>50</sup> Human Resources and Skills Development Canada, 1997.
- <sup>51</sup> Ontario Ministry of Labour, 1987.
- <sup>52</sup> Moore, 2004:24-25.
- <sup>53</sup> Saunders and Dutil, 2005.
- <sup>54</sup> Moore, 2004.
- <sup>55</sup> Ages, 2002b.
- <sup>56</sup> Ages, 2002b.
- <sup>57</sup> Rittich, 2004.

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Appendix 1: Minimum piecework rates of pay for hand-harvesters															
Type of harvest	Basis of payment	1995		1-Mar 1996		1-Apr 1998		16-Apr 1999 <sup>a</sup>		1-Nov 2000 <sup>a</sup>		1-Nov 2001 <sup>a,c</sup>		15-May 2003 <sup>b</sup>	
		(\$)	(% change)	(\$)	(% change)	(\$)	(% change)	(\$)	(% change)	(\$)	(% change)	(\$)	(% change)	(\$)	(% change)
Raspberries	per lb.	\$0.26	7.8%	\$0.28	2.2%	\$0.28	7.5%	\$0.30	6.3%	\$0.32	6.3%	\$0.34	5.3%	\$0.33	-3.6%
Strawberries	per lb.	\$0.25	7.3%	\$0.27	2.3%	\$0.27	7.7%	\$0.29	6.2%	\$0.31	6.2%	\$0.33	5.2%	\$0.31	-3.7%
Blueberries	per lb.	\$0.30	3.4%	\$0.31	2.3%	\$0.31	7.7%	\$0.34	6.2%	\$0.36	6.2%	\$0.38	5.3%	\$0.36	-3.7%
Cherries	per lb.	\$0.17	0.0%	\$0.17	2.3%	\$0.18	7.3%	\$0.19	6.3%	\$0.20	6.3%	\$0.21	5.4%	\$0.21	-3.8%
Apples	per bin	\$13.16	0.0%	\$13.16	2.1%	\$13.44	7.6%	\$14.46	6.3%	\$15.37	6.3%	\$16.18	5.3%	\$15.60	-3.6%
Pears	per bin	\$14.81	0.0%	\$14.81	2.2%	\$15.13	7.6%	\$16.28	6.3%	\$17.30	6.3%	\$18.22	5.3%	\$17.56	-3.6%
Apricots	per 1/2 bin	\$13.99	10.2%	\$15.41	0.3%	\$15.46	7.6%	\$16.63	6.3%	\$17.68	6.3%	\$18.61	5.3%	\$17.94	-3.6%
Peaches	per 1/2 bin	\$13.99	0.0%	\$13.99	2.1%	\$14.29	7.6%	\$15.38	6.2%	\$16.34	6.2%	\$17.20	5.3%	\$16.58	-3.6%
Prune plums	per 1/2 bin	\$14.81	0.0%	\$14.81	2.2%	\$15.13	7.6%	\$16.28	6.3%	\$17.30	6.3%	\$18.22	5.3%	\$17.56	-3.6%
Grapes	per 1/2 bin	\$13.99	0.0%	\$13.99	2.1%	\$14.29	7.6%	\$15.38	6.2%	\$16.34	6.2%	\$17.20	5.3%	\$16.58	-3.6%
Brussel sprouts	per lb.	\$0.12	8.7%	\$0.13	2.4%	\$0.13	7.8%	\$0.14	5.8%	\$0.15	5.8%	\$0.15	5.5%	\$0.15	-3.2%
Beans	per lb.	\$0.17	9.1%	\$0.18	2.2%	\$0.18	7.6%	\$0.20	6.1%	\$0.21	6.1%	\$0.22	5.7%	\$0.21	-3.6%
Peas	per lb.	\$0.21	9.2%	\$0.23	2.2%	\$0.23	7.4%	\$0.25	6.5%	\$0.26	6.5%	\$0.28	5.3%	\$0.27	-3.6%
Mushrooms	per lb.	\$0.18	0.0%	\$0.18	2.2%	\$0.19	7.6%	\$0.20	6.5%	\$0.21	6.5%	\$0.22	5.2%	\$0.22	-3.6%
Daffodils	per 10 stems	-		\$0.11	1.8%	\$0.11	0.0%	\$0.11	6.3%	\$0.12	6.3%	\$0.13	5.0%	\$0.13	0.0%
Minimum hourly wage (non-farm)	\$7.00	\$7.00	\$7.15	2.1%	\$7.15	\$7.60	\$8.00	6.3%	\$8.00	5.3%	\$8.00	0.0%	\$8.00	0.0%	

Notes: <sup>a</sup> Piece rates include 3.6 per cent for statutory holiday pay and 4 per cent for vacation pay (daffodils excluded).

<sup>b</sup> Piece rates no longer include statutory holiday pay; vacation pay left in (daffodils excluded).

Source: BC Employment Standards Regulation, Part 4, Section 18.



**Appendix 2: BC Employment Standards Branch Enforcement Resources**

	Fiscal years										% reductions 2000/01 to 2004/05	
	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01 <sup>b</sup>	2001/02	2002/03	2003/04		2004/05
<b>Budget</b>												
Total Branch	\$9,821,749	\$10,417,531	\$10,043,000	\$10,220,000	\$10,494,000	\$10,621,000	\$11,629,000	\$11,239,000	\$11,489,000	\$11,396,000	\$9,765,000	-16.0%
SD&FWCPa	\$0	\$0	\$0	\$0	\$733,000	\$708,000	\$705,000	\$0	\$0	\$0	\$0	-100%
<b>Staffing – FTE</b>												
Total Branch	145	141	139	137	155	149	162	151	125	116	109	-32.7%
SD&FWCPa					15	15	14	0	0	0	0	-100%
<b>Branch offices</b>												
Vancouver & Fraser Valley	5	5	5	5	5	5	5	5	2	2	2	-60.0%
Vancouver Island	4	4	4	4	4	4	4	4	2	2	2	-50.0%
Thompson – Okanagan	3	3	3	3	3	3	3	3	1	1	1	-66.6%
Kootenay – Boundary	2	2	2	2	2	2	2	2	1	1	1	-50.0%
North East	1	1	1	1	1	1	1	1	1	1	1	0.0%
North Central	1	1	1	1	1	1	1	1	1	1	1	0.0%
North West	1	1	1	1	1	1	1	1	1	1	1	0.0%
Total offices	17	17	17	17	17	17	17	17	9	9	9	-47.0%
<b>Total BC employment</b>	<b>1,754,000</b>	<b>1,786,100</b>	<b>1,813,300</b>	<b>1,854,000</b>	<b>1,853,500</b>	<b>1,893,100</b>	<b>1,930,000</b>	<b>1,922,100</b>	<b>1,960,100</b>	<b>2,014,200</b>	<b>2,059,700</b>	
<b>Total employment establishments</b>	<b>140,440</b>	<b>146,417</b>	<b>149,315</b>	<b>153,289</b>	<b>154,027</b>	<b>154,944</b>	<b>157,371</b>	<b>157,421</b>	<b>157,652</b>	<b>158,470</b>	<b>n/a</b>	

Notes: <sup>a</sup>Skills Development & Fair Wage Compliance Program. <sup>b</sup>Pre-New Era base fiscal year.

Sources: BC Ministry of Skills Development and Labour Annual Reports and Annual Service Plan Reports. BC STATS, Employment by Industry for BC, Development Region and Metro Areas and Establishment Counts by Employee Size.



Table 3: British Columbia Employment Standards Branch Complaints Data, 1996/97 to 2004/05										
Fiscal year	Number of complaints received by branch	Number of complaints withdrawn or abandoned	% complaints withdrawn or abandoned	Number of complaints to adjudication/determination	Number of determinations finding no contravention by employer	% determinations finding no contravention	Number of complaints dismissed under sec 76(3)c	Number of determinations finding contravention by employer	% determinations finding contravention	
1996/97	17,817	4,786	26.9%	13,031	575	4.4%	0	12,456	95.6%	
1997/98	14,495	4,171	28.8%	10,324	908	8.8%	0	9,416	91.2%	
1998/99	13,406	4,331	32.3%	9,075	694	7.6%	0	8,381	92.4%	
1999/00	11,001	4,356	39.6%	6,645	488	7.3%	0	6,157	92.7%	
2000/01	12,485	4,095	32.8%	8,390	377	4.5%	0	8,013	95.5%	
2001/02	11,924	4,061	34.1%	7,863	324	4.1%	0	7,539	95.9%	
2002/03a	6,488	2,641	40.7%	3,847	239	6.2%	0	3,608	93.8%	
2003/04	4,839	1,369	28.3%	3,470	270	7.8%	2	3,198	92.2%	
2004/05b	3,390	709	20.9%	2,681	184	6.9%	153	2,344	87.4%	
Percentage changes										
2001/02 to 2002/03	-45.6%	-35.0%	19.5%	-51.1%	-26.2%			-52.1%		
1998/99 to 2003/04	-63.9%	-68.4%	-12.4%	-61.8%	-61.1%			-61.8%		
2000/01 to 2003/04	-61.2%	-66.6%	-13.7%	-58.6%	-28.4%			-60.1%		

Notes: a Year of significant changes to the Employment Standards Act (Bills 48 & 37) and to regulations under the Act.

bTo December 2004 only.

c Section 76(3) dismissals involve the Director's refusal of a complaint. Highlighted data considered unreliable by Branch.

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



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Established in 1997, the CCPA's BC Office offers policy research and commentary on a wide range of provincial issues, such as: BC finances, taxation and spending; poverty and welfare policy; BC's resource economy; privatization and P3s; public education financing; health care; and more.

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### BC Office

1400 – 207 West Hastings Street  
Vancouver, BC V6B 1H7  
tel: 604 801 5121  
fax: 604 801 5122  
[ccpabc@policyalternatives.ca](mailto:ccpabc@policyalternatives.ca)

### National Office

410 – 75 Albert Street  
Ottawa, Ontario K1P 5E7  
tel: 613 563 1341  
fax: 613 233 1458  
[ccpa@policyalternatives.ca](mailto:ccpa@policyalternatives.ca)

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The Economic Security Project is a major research initiative of the CCPA's BC Office and Simon Fraser University, in partnership with 24 community organizations and four BC universities.

The project examines how recent provincial policy changes affect the economic well-being of vulnerable people in BC, such as those who rely on social assistance, low-wage earners, recent immigrants, youth and others. It also develops and promotes policy solutions that improve economic security.

The project is funded primarily by a grant from the Social Sciences and Humanities Research Council of Canada (SSHRC) through its Community-University Research Alliance Program.

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