MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
AND MINISTER RESPONSIBLE FOR LABOUR

INFORMATION NOTE

Cliff #: 53792

Date: July 21, 2017

PREPARED FOR: Honourable Harry Bains, Minister

ISSUE: Asbestos Working Group Quarterly Report and Consultation Plan

BACKGROUND:

On March 22, 2017, the previous government announced the establishment of a cross-ministry working group to ensure that British Columbians are adequately protected from the dangers of asbestos. The working group's mandate is "to identify, review and report on outstanding risks that asbestos poses for British Columbians and the environment and additional strategies and initiatives that the British Columbia government and its agencies could undertake to further protect people and the environment from the dangers of asbestos."

The working group is comprised of senior representatives from the Ministries of: Labour; Environment and Climate Change Strategy (MOE); Municipal Affairs and Housing (MAH); and Health (MoH). WorkSafeBC is also represented on the working group. The working group is chaired by the Executive Director, Labour Policy and Legislation within Labour. The Deputy Minister of Labour is the executive sponsor.

The working group was established in part in response to a BC Federation of Labour proposal that government convene a multi-stakeholder Provincial Roundtable to develop a comprehensive strategy for eliminating asbestos exposures in BC workplaces.

Following a gap analysis that was undertaken in fall 2016, the previous government directed that the working group be established to address four key issues that were identified by the gap analysis:

- Gaps in terms of how the general public is covered;
- Gaps in terms of municipal regulation and oversight;
- Potential gaps in terms of coordination of activities across agencies and municipalities;
- Issues pertaining to the qualifications of asbestos abatement contractors and workers who handle asbestos as part of their jobs.

The purpose of this information note is: to provide a quarterly update to the Minister on the working group's activities, initiatives and proposals; to outline proposed next steps with respect to potential stakeholder and public engagement; and to seek the Minister's direction on whether the working group should continue based on its established work plan, or whether government wishes to consider alternative courses of action.

DISCUSSION:

Quarterly Report:

The working group has completed the “research and analysis on key issue areas” phase of its work plan, and is currently preparing for a consultation phase with key stakeholders, which is planned for September and October of this year. The working group has identified the following strategies and initiatives aimed at further protecting people and the environment from the dangers or asbestos:

s.13,s.17

s.13,s.17

In addition to these initiatives, working group members have identified issues within the mandates of their respective ministries and agencies, and have used the working group as a forum for making connections and drawing out cross-ministry/agency impacts and implications. These initiatives include:

- **Information sharing and improving coordination between ministries, agencies and levels of government:**

  - WorkSafeBC is entering into information sharing agreements with municipalities with respect to the sharing of demolition permit information in order to "improve Officers' ability to focus resources and identify worksites with asbestos exposure risks." To date, WorkSafeBC has formal Information Sharing Agreements in place with 8 municipalities and informal agreements in place with another 27 municipalities (out of approximately 190 municipalities in BC).

  - Metro Vancouver is leading the Gypsum Roundtable, with the participation of WorkSafeBC, the Ministry of Envioronment, BC Municipal Safety Association and the City of Vancouver Transfer and Landfill operations. This group has been meeting to explore potential options to redress problems around asbestos contaminated drywall. Metro Vancouver has engaged a consultant to identify potential management strategies and develop resources. The proposed timeline is June to December 2017.

- **Enhancing public awareness:**

  - In November 2016, WorkSafeBC launched an awareness campaign targeted to home propery owners who are considering or undertaking renovations or

demolitions regarding the dangers of asbestos in homes built before 1990. WorkSafeBC plans to continue this campaign through the fall of 2017.

- WorkSafeBC has launched a targeted contractor awareness initiative to support WorkSafeBC's Prevention Field Services work in construction. The purpose is to get the word out directly to contractors regarding their obligation to manage asbestos safety and responsibly.

- OHCS and MOE have published fact sheets and guidance documents targeted at home owners.

- **Asbestos inventory of all pre-1990 buildings where public service employees are working:**

  - The Real Property Division of the Ministry of Citizens' Service and the BC Public Service Agency are undertaking a survey of all pre-1990 buildings where public service employees are located (including 451 leased and 307 owned buildings). The purpose of the survey is to develop an inventory of all asbestos containing materials to provide the information necessary for ministry worksites to put in place asbestos exposure control plans as necessary.

- **Safe disposal of asbestos:**

  - MOE is examining issues related to the safe disposal of asbestos in the context of a jurisdictional study of legislation/regulations, standards and policies on hazardous waste management. MOE has advised the working group that the scan has been completed. However, MOE has also advised that the report still needs to go through internal review before there can be consideration of next steps.

Finally, the working group has identified the following issues that require further consideration and input through the consultation phase:

s.13,s.17

At this point in its work plan, the working group has completed its research and analysis phase, has identified a number of specific initiatives that ministries and agencies are currently undertaking, and has identified a number of specific proposals and broader issues that it wishes to seek input on through the next phase – the consultation phase – of its work plan.

Consultation Plan:

The consultation phase of the working group's work is currently scheduled to take place in September and October of this year. As part of the consultation phase, the working group is proposing to engage key stakeholders to seek their views on potential strategies for eliminating asbestos exposures. See the attachment for a draft of the asbestos working group's proposed consultation plan.

NEXT STEPS:

This quarterly report sets out the work that the asbestos working group has undertaken so far, as well as proposed next steps which include the attached draft of a consultation plan. The ministry is seeking the Minister's direction on s.13,s.17 s.13,s.17

ATTACHMENTS: DRAFT Asbestos Working Group Consultation Plan

Prepared by: John Blakely, Executive Director, Labour Policy and Legislation
Telephone: 250 356-9987

Reviewed by			
Dir:	ED:	ADM:	DM:

Attachment

Asbestos Working Group Consultation Plan
DRAFT

s.13

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Proposed List of Stakeholders

To be Discussed

MINISTRY OF LABOUR

DECISION NOTE

Cliff #: 132055

Date: September 6, 2017

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: *Employment Standards Act* – s.12,s.13,s.14

BACKGROUND:

Prior to the expected release in mid-2018 of the British Columbia Law Institute's (BCLI's) final report of recommendations for improvements to the *Employment Standards Act* (ESA), the Ministry of Labour is pursuing s.12,s.13,s.14
s.12,s.13,s.14

DISCUSSION:

s.12,s.13,s.14

s.12,s.13,s.14

s.12,s.13,s.14

s.12,s.13,s.14

NEXT STEPS:

The Ministry is seeking direction from the Minister with regard to the following:

s.12,s.13,s.14

s.12,s.13,s.14

ATTACHMENTS: s.12,s.13,s.14

Approved / Not Approved	Date:
Minister's Signature:	

DM Contact: Trevor Hughes, (250) 356-1346
Prepared by: Jennifer Webb, Senior Policy Advisor, Labour Policy and Legislation

Reviewed by			
Dir:	ED:	ADM:	DM:

s.12,s.13,s.14

s.12,s.13,s.14

MINISTRY OF LABOUR
DECISION NOTE

Cliff #: 54206

Date: October 12, 2017

PREPARED FOR: The Honourable Harry Bains, Minister

ISSUE: International Labour Organization (ILO) Convention 81 on Labour Inspection (C81).

BACKGROUND: On July 28, 2017, the Federal Deputy Minister responsible for Labour, Lori Sterling, sent a formal request to her provincial and territorial counterparts requesting that the provinces and territories review C81with the aim of confirming provincial support for ratification and agreement to the implementation of the C81 provisions. Ms. Sterling requested that provincial governments respond by mid-October, either indicating provincial support for ratification or the status of the province's review of C81.

This request is part of a federal government initiative (supported by the provinces) aimed at increasing the number of ILO conventions that have been ratified by Canada. At the September 2016 meeting of Ministers responsible for Labour, held in Prince George, C81 was identified in a Plan of Action as one of several conventions that would be reviewed before the end of 2018.

While foreign affairs fall within the federal jurisdiction, labour and employment matters generally fall within provincial jurisdiction. In practical terms, this has meant that the federal government does not enter into new commitments or agreements on international labour matters unless the provinces and territories have indicated their consent. In recent years, Canada has successfully gained the consent of provinces to ratify several ILO conventions – notably C138 on the Minimum Age of Employment and C98 on the Right to Organize and Collective Bargaining.

C81, established in 1947, deals with labour inspections by government officials in industrial and commercial establishments. It is one of the ILO governance conventions that are a priority for the organization. To date, 145 of the 187 member states have ratified C81.

The key provisions of C81 aim to ensure that states have effective and robust systems in place for the enforcement of labour laws through government inspection of commercial and industrial establishments. This includes maintaining a system of labour inspection that, amongst other things:

- serves to enforce labour laws dealing with workplace conditions and worker safety;
- is controlled by a "central authority" (e.g., the provincial government);
- co-operates with other agencies as appropriate (e.g., police forces);
- includes adequately trained inspection staff that are public employees with stable income and job security, eligible to both men and women;
- has the powers necessary to adequately carry out its responsibilities (e.g., enter into workplaces, require the production of employment records, enforce the posting of notices, etc.).

ILO Enforcement

An ILO convention is an international treaty that applies only to States that have ratified the convention. In Canada, the federal government seeks unanimous consent from the provinces before proceeding to ratification given that most of the issues covered under ILO conventions fall within provincial jurisdiction.

Once a country signs on to an ILO convention it is subject to sanctions from the ILO for non-compliance. However, those sanctions are largely persuasive in nature and are designed to increase public pressure on governments (e.g., citing a concern about non-compliance in a report). The ILO does not impose binding orders or financial penalties or other tangible sanctions for non-compliance.

DISCUSSION: s.13,s.14,s.16

s.13,s.14,s.16

s.13,s.14,s.16

Process for Obtaining Provincial Support for ILO Conventions

Canada recently ratified two ILO conventions - C138 on Child Employment and C98 on the Right to Collective Bargaining. In both of those cases, the Federal Government stated that unless a formal objection to ratification was raised by a province, Canada would proceed with ratification. The BC government remained silent in both cases, and accordingly, this was taken as "silent consent".

In years past, there has been no single approach/mechanism for indicating B.C.'s consent to ILO conventions. Consent has been given in some cases by way of a letter from the Minister on his or her own accord, whereas in other cases (e.g., C98), the matter went to Cabinet s.13,s.14,s.16
s.13,s.14,s.16

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CONCLUSION/Next Steps: s.13,s.14,s.16
s.13,s.14,s.16

s.13,s.14,s.16

ATTACHMENTS:

1) Draft letter from DM Hughes to DM Sterling.
2) International Labour Organization (ILO) Convention 81 on Labour Inspection

Approved / Not Approved	Date:
Comments:	

Prepared by: Jake Ayers, Senior Policy Advisor
Telephone: (office) 250 953-3344 (Cell) s.17

Reviewed by			
Dir: MT	ED: JB	ADM: TH	DM:

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Withheld pursuant to/removed as

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ATTACHMENT 2

C081 - Labour Inspection Convention, 1947 (No. 81)

Convention concerning Labour Inspection in Industry and Commerce (Entry into force: 07 Apr 1950)Adoption: Geneva, 30th ILC session (11 Jul 1947) - Status: Up-to-date instrument (Governance (Priority) Convention).Convention may be denounced: 07 Apr 2020 - 07 Apr 2021

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947, and

Having decided upon the adoption of certain proposals with regard to the organisation of labour inspection in industry and commerce, which is the fourth item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this eleventh day of July of the year one thousand nine hundred and forty-seven the following Convention, which may be cited as the Labour Inspection Convention, 1947:

PART I. LABOUR INSPECTION IN INDUSTRY

Article 1

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

Article 2

- 1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

- 2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

Article 3

- 1. The functions of the system of labour inspection shall be:
  - (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
  - (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
  - (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.
- 2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 4

- 1. So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.
- 2. In the case of a federal State, the term *central authority* may mean either a federal authority or a central authority of a federated unit.

Article 5

The competent authority shall make appropriate arrangements to promote:

- (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; and
- (b) collaboration between officials of the labour inspectorate and employers and workers or their organisations.

Article 6

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 7

- 1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.
- 2. The means of ascertaining such qualifications shall be determined by the competent authority.
- 3. Labour inspectors shall be adequately trained for the performance of their duties.

Article 8

Both men and women shall be eligible for appointment to the inspection staff; where necessary, special duties may be assigned to men and women inspectors.

Article 9

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

Article 10

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular--
  - (i) the number, nature, size and situation of the workplaces liable to inspection;
  - (ii) the number and classes of workers employed in such workplaces; and
  - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 11

- 1. The competent authority shall make the necessary arrangements to furnish labour inspectors with--

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

- 2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 12

- 1. Labour inspectors provided with proper credentials shall be empowered:
  - (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
  - (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
  - (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular--
    - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
    - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
    - (iii) to enforce the posting of notices required by the legal provisions;
    - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

- 2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 13

- 1. Labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.
- 2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring--
  - (a) such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers; or
  - (b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.
- 3. Where the procedure prescribed in paragraph 2 is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force.

Article 14

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 15

Subject to such exceptions as may be made by national laws or regulations, labour inspectors--

- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
- (b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 16

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 17

- 1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.
- 2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 18

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 19

- 1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.
- 2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Article 20

- 1. The central inspection authority shall publish an annual general report on the work of the inspection services under its control.
- 2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.
- 3. Copies of the annual reports shall be transmitted to the Director-General of the International Labour Office within a reasonable period after their publication and in any case within three months.

Article 21

The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) statistics of workplaces liable to inspection and the number of workers employed therein;

- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;
- (f) statistics of industrial accidents;
- (g) statistics of occupational diseases.

PART II. LABOUR INSPECTION IN COMMERCE

Article 22

Each Member of the International Labour Organisation for which this Part of this Convention is in force shall maintain a system of labour inspection in commercial workplaces.

Article 23

The system of labour inspection in commercial workplaces shall apply to workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

Article 24

The system of labour inspection in commercial workplaces shall comply with the requirements of Articles 3 to 21 of this Convention in so far as they are applicable.

PART III. MISCELLANEOUS PROVISIONS

Article 25

- 1. Any Member of the International Labour Organisation which ratifies this Convention may, by a declaration appended to its ratification, exclude Part II from its acceptance of the Convention.
- 2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.
- 3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate each year in its annual report upon the application of this Convention the position of its law and practice in regard to the provisions of Part II of this Convention and the extent to which effect has been given, or is proposed to be given, to the said provisions.

Article 26

In any case in which it is doubtful whether any undertaking, part or service of an undertaking or workplace is an undertaking, part, service or workplace to which this Convention applies, the question shall be settled by the competent authority.

Article 27

In this Convention the term *legal provisions* includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

Article 28

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labour Organisation full information concerning all laws and regulations by which effect is given to the provisions of this Convention.

Article 29

- 1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.
- 2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.
- 3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

Article 30

- 1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 an, 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office as soon as possible after ratification a declaration stating--
    - (a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
    - (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

- (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- (d) the territories in respect of which it reserves its decision.

- 2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
- 3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.
- 4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 34, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 31

- 1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the Government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.
- 2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office --
  - (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
  - (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.
- 3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

- 4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.
- 5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 34, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 32

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 33

- 1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
- 2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
- 3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 34

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 35

- 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
- 2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 36

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 37

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 38

- 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 34 above, if and when the new revising Convention shall have come into force;
  - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 39

The English and French versions of the text of this Convention are equally authoritative.

MINISTRY OF LABOUR
INFORMATION

Cliff #: 54222

Date: October 19, 2017

PREPARED FOR: Honourable Harry Bains, Minister

ISSUE: Standardizing resource road safety rules.

BACKGROUND:

There are approximately 600,000 kilometers of resource roads in use by workers in BC. Resource roads are roads on Crown land that are not a public highway or within a municipality. These roads provide access for resource development and access to communities, recreation, wilderness and private residences. Resource roads do not include roads within a worksite (e.g. mine site, cutblock, well site) and are currently administered through several different pieces of legislation. Many of these legislative provisions regulate specific industries or activities (e.g. *Forest Act*, *Oil and Gas Activities Act*, *Land Act*). Each addresses safety in different ways and to different degrees.

Under the *Workers Compensation Act* and the *Occupational Health and Safety Regulation*, owners of a workplace must maintain the land and premises in a manner that ensures the health and safety of persons at or near the workplace. Owners must also provide employers or prime contractors with information necessary to control hazards present at the workplace. WorkSafeBC is mandated to ensure that these provisions to protect workers are complied with and enforced.

DISCUSSION:

Between 2005 and 2012, WorkSafeBC attempted to take measures to make resource roads safer for workers. These measures would have had the effect of treating resource roads as workplaces for occupational health and safety purposes. In turn, this would have placed new obligations on owners (including the Crown), prime contractors and employers to coordinate their activities on resource roads. It would also have made it easier for these parties to restrict public access to resource roads.

However, the previous government did not support WorkSafeBC's approach of treating resource roads as workplaces on the grounds that it conflicted with its long-standing "open roads" policy which encourages public access for resource development, tourism and other purposes. Instead, the previous government took the view that worker and public safety would better be served by the establishment of standardized and enforceable road use rules. As a result, in October 2012, the previous government approved an Order in Council (OIC) that amended the *Occupational Health and Safety Regulation* to clarify the *Workers Compensation Act* definition of "workplace" and its application to resource roads. Specifically, the regulation states that a resource road is not a "workplace", and therefore, it

establishes that resource roads will be treated much the same as public highways for the purpose of occupational health and safety enforcement.

This OIC was intended to be an interim measure that would be in place until government brought in a new *Natural Resource Roads Act* that would have established standardized and enforceable road use rules. Instead, this OIC has remained in place for five years, much longer than originally anticipated.

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development (MFLNRO) has been working on a project that is intended to standardize resource road safety rules across all MFLNRO legislation and the *Oil and Gas Activities Act*. Standardization of resource roads legislation was attempted under an omnibus bill approach in 2008 and the Natural Resource Road Act Project (NRRA Project) policy initiative from 2011 to 2016.

The current legislative regime for resource roads relies on 14 acts and 22 regulations to create rules on the construction, maintenance, use and deactivation of resource roads. MFLNRO has noted that addressing resource road issues by means of an omnibus bill is challenging due to diverging stakeholder interests and the difficulty in implementing legislation across multiple ministries and agencies.

The Resource Roads Project Team has identified an alternative approach which focuses first on establishing road safety rules by aligning MFLNRO legislation with existing rules under the *Oil and Gas Activities Act*. This would standardize safety rules for industrial users and the public on over 95 percent of resource roads. Other Resource Roads Project Phases under development for future consideration include modernization of road authorizations and a new road maintenance dispute model.

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Ministers of: Labour; Forests, Lands, Natural Resource Operations and Rural Development; and Energy, Mines and Petroleum Resources to brief them on the proposal before it goes to Cabinet. MFLNRO is particularly interested in the Minister of Labour's views on this initiative because they believe it aligns with the Minister of Labour's mandate letter and Confidence and Supply Agreement commitments.[1]

[1] Mandate letter commitment: "Review and develop options with WorkSafeBC to increase compliance with employment laws and standards put in place to protect the lives and safety of workers"; Confidence and Supply Agreement commitment: "Improve fairness for workers, ensure balance in workplaces, and improve measures to protect the safety of workers at work so that everyone goes home safely and the workers and families are protected in cases of death or injury".

NEXT STEPS:

It is anticipated that MFLNRO will be in contact with the Minister's Office to arrange a meeting between the relevant Ministers to brief them on their standardized resource road proposal.

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MINISTRY OF LABOUR
INFORMATION NOTE

Cliff #: 54333

Date: Revised - November 9, 2017

PREPARED FOR: The Honourable Harry Bains, Minister

ISSUE: Status update on the Minister's mandate letter commitment: "Create a Temporary Foreign Worker registry to help protect vulnerable workers from exploitation and to track the use of temporary workers in our economy".

BACKGROUND:

There are two federal programs through which foreign nationals can obtain a work permit to work and reside temporarily in Canada:

- The Temporary Foreign Worker Program (TFWP), which requires a labour market test proving no qualified Canadians are available for the job. This test is called a Labour Market Impact Assessment (LMIA).
- The International Mobility Program (IMP), which is an umbrella program for a variety of LMIA-exempt streams.

BC's role regarding foreign nationals who are in BC under a work permit is defined in the Temporary Foreign Worker (TFW) Annex of the Canada-BC Immigration Agreement. This Annex outlines principles of collaboration and cooperation between BC and the federal government regarding the TFWP. The areas of cooperation include protections for foreign workers and selecting occupations for expedited processing. The Ministry of Jobs, Trade and Technology is responsible for BC's immigration policy and for administering this Agreement from the province's perspective.

In 2016, the number of work permits issued to people destined to BC was 47,260. About one-third of the work permits issued in 2016 (15,265) were through the TFWP, while the remainder were through the IMP. Of the 15,265 TFWP work permits issued in 2016:

- 46% (6,965) were through the high and low wage streams[1];

[1] The federal government's work permit data available to the province do not break this number down into the number of work permits issued through the high wage streams and the number of permits issued through the low wage streams. However, a separate data set on the number of approved LMIAs suggests that

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"Low wage" is defined as under $22.50/hour (the provincial median hourly wage), and "high wage" is defined as above $22.50/hour. Given this, a reasonable estimate of the make-up of BC's TFWP workforce in 2016 is that

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- 44% (6,665) were through the Agriculture stream; and
- 10% (1,635) were through the Caregiver stream.

Of the 32,355 IMP work permits issued in 2016:

- 50% (16,025) were issued under Competitiveness and Public Policy (e.g. post-doctoral fellows; spouses of skilled workers);
- 20% (6,415) were issued under Reciprocal Employment (e.g. visiting professors, youth on working holiday visa);
- 18% (5,825) were issued under International and Federal/Provincial Agreements (e.g. NAFTA);
- 11% (3,640) were issued under Significant Benefit (e.g. intra-company transfers, film & television production); and
- 1% (450) were issued under Charitable or Religious Work.

Based on LMIA data, the sectors that use the TFWP the most are: agriculture, information/cultural industries (including tech) and manufacturing.

In light of this background and context on foreign nationals working and residing temporarily in BC, the purpose of this information note is provide an update on the work completed to date on this mandate letter commitment. Specifically, this note is divided into the following sections:

- Background on issues facing foreign nationals in BC
- How a Temporary Foreign Worker registry can help to protect vulnerable workers in BC
- A Temporary Foreign Worker registry and the commitment to track the use of temporary workers in the BC economy
- Issues and considerations for the development of options for BC
- Potential options for consideration
- Next steps

DISCUSSION:

Background on issues facing foreign nationals in BC

Any foreign national s in BC could potentially be placed into a vulnerable situation by virtue of the fact that they are in a different country and under different laws. However, the degree of risk can vary according to factors such as language, skill and wage levels, with those with weaker English language skills and with lower wage and skill levels being at greater risk. In addition, foreign nationals who are in BC under the TFWP may face an even higher degree of risk because in many cases, their work permits are tied to a specific employer. This means that if an employment relationship goes badly, the TFW can find him or herself in an inherently and uniquely vulnerable state. Specifically, in situations where a recruiter (a person who, for a fee, provides recruitment services) or

an employer is being abusive or is contravening employment, human rights laws or other laws, the TFW may feel compelled to put up with this abusive situation because they may perceive that the only alternatives available to them are unemployment and deportation. While the federal government makes it clear that a TFW is allowed to change employers[2], this process is cumbersome. Non-government organizations that advocate on behalf of TFWs frequently refer to the power imbalance between unscrupulous recruiters and employers on one hand and TFWs on the other, and they note that this problem is especially acute for the s.16 of TFWs with less skills (i.e., from the low wage, agriculture and care giver streams), and who may not have strong English language skills or may not be fully aware of their rights.

The documented cases of exploitation and abuse have taken various forms, and have included:

- Foreign nationals being recruited for jobs that have turned out not to exist;
- Foreign nationals being placed into jobs that are different from the jobs they were approved to work at under the terms of their LMIA, at lower wages and inferior terms and conditions – and sometimes with different employers;
- Recruiters or employers taking possession of or retaining a foreign national's passport;
- Foreign nationals being required to pay illegal fees to recruiters;
- Non-payment of wages, unsafe working conditions and other employment standards and occupational health and safety violations;
- Sub-standard housing, including overcrowding, excessive rents, unsafe and unsanitary housing conditions, and being housed behind locked gates (thereby restricting freedom of movement during off-hours);
- Human trafficking situations;
- Sexual exploitation; and
- Bullying, threatening behaviour, and other forms of abuse.

To date, neither Canada nor BC have undertaken comprehensive studies to determine the extent to which these abuses are occurring. However, recent investigations by federal officials within the TFWP's Integrity Unit have suggested that these practices are more common across Canada than previously thought, and that they primarily involve TFWs. In BC, the Mexican Consulate recently undertook inspections of housing conditions for Mexican workers in the Okanagan under the Seasonal Agricultural

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[2] From the Employment and Social Development Canada website: **Am I allowed to change employers?** Yes, you are allowed to change employers. Your employer cannot penalize or deport you for looking for another job. However, your work permit may only allow you to work for your current employer. Before accepting new employment, remember that your new employer will have to get permission from the Government of Canada to hire you as a temporary foreign worker. You will also need to apply for a new work permit before changing jobs. Workers under the Seasonal Agricultural Workers Program do not need to get a new work permit if they change employers.

Worker Program (which is a sub-program within the TFWP). These inspections found that more than 40% of properties inspected were in serious violation of acceptable housing standards. These inspections also identified allegations of potential employment standards and occupational health and safety violations that have since been referred to the Employment Standards Branch and WorkSafeBC for investigation.[3]

At the same time, it is important to note that this problem does not apply to all foreign nationals who arrive in BC. Foreign nationals who arrive in BC under the IMP are not tied by their work permit to a single employer. In addition, many of these workers tend to be highly mobile and have higher skill levels that make it far less likely that they would be considered vulnerable. Nevertheless, there may well be some classes of foreign nationals in BC under the IMP that could be considered vulnerable. Further research will be undertaken to determine if and to what extent this may be an issue.

Given this, while the focus of this note will be primarily on foreign nationals that arrive in BC under the TFWP (because the available evidence suggests that this group is inherently vulnerable and requires further protections), it is proposed that the options presented below be structured such that they could apply to all employers of foreign nationals - but with provisions that would allow for the exclusion of certain classes of foreign nationals and their employers on a case by case basis if there is convincing evidence that the foreign nationals are not vulnerable to abuse and exploitation.

How a Temporary Foreign Worker registry can help protect vulnerable workers

The Manitoba and Saskatchewan registries provide a useful starting point for the development of a TFW registry in BC. In both jurisdictions, the registries: require foreign worker recruiters (i.e., those who, for a fee, provide recruitment services) to be licensed and employers of foreign workers to be registered; specify that only licenced foreign worker recruiters can be used by an employer to recruit temporary foreign workers; and establish certain prohibited practices.

A key feature that distinguishes Manitoba and Saskatchewan from the rest of Canada is that the two provinces obtained agreement from the federal government that the federal government would not process LMIA applications from unregistered employers. Employers wishing to recruit TFWs in these two provinces must instead apply for

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provincial registration and meet certain provincial registration requirements before the federal government processes their LMIA applications. In contrast, in the rest of Canada, there is no provincial screening of employers, and the decision on which employers will be permitted to hire TFWs rests entirely with the federal government as part of the LMIA approval process.[4]

Both jurisdictions attempt to address the exploitative and abusive practices described above by setting strong criteria against which applications for licenses and registrations are issued or denied, and for determining whether licenses and registrations should be amended, suspended or cancelled. If a foreign worker recruiter or an employer has been found to have engaged in any of the prohibited practices specified in their legislation, they could be refused a new license or registration or they could have an existing license or registration cancelled. The consequence of the refusal or cancellation of a foreign worker recruiter's license is that the recruiter can no longer engage in foreign worker recruitment. The consequence of the refusal or cancellation of an employer's registration is that the employer can no longer recruit foreign workers. In addition, the recruiter or the employer could face prosecution and fines of up to $50,000 in Manitoba and $100,000 in Saskatchewan.[5] See appendix 1 for the prohibited practices prescribed in the Manitoba and Saskatchewan legislation.

Both jurisdictions also have strong legislative provisions pertaining to inspections, investigations and audits. In addition, Manitoba's legislation goes further than Saskatchewan's in that Manitoba requires registered employers to provide detailed information on the individual TFWs they hire (including names, addresses, telephone number, job title and work location). Manitoba advises that this information is used to provide these workers with information on employment rights and services and on how foreign workers can become permanent residents, and that it is not used for inspection or investigation purposes.

A Temporary Foreign Worker registry and the commitment to track the use of temporary workers in the BC economy

The primary purpose of both the Manitoba and Saskatchewan models is to protect foreign workers. As such, it appears that neither jurisdiction designed their registries

[4] It should be noted that the federal government welcomes provincial input on an employer's record of compliance with provincial labour and employment laws before the federal government decides whether to issue an LMIA. However, existing information sharing arrangements are informal and inconsistently applied, and are insufficient for the federal government to decide whether to issue a negative LMIA based upon an employer's failure to comply with provincial law.

[5] In Manitoba, fines may be up to $25,000 for an individual and $50,000 for a corporation for those found in violation of their legislation. In Saskatchewan, fines may be up to $50,000 for an individual and $100,000 for a corporation. In addition, in Saskatchewan, those found in violation of the Act could be subject to up to one year imprisonment.

with a view to pulling out data and information that would help to support tracking the use of temporary workers for labour market development purposes.

As for whether a BC registry could be developed for this purpose, discussions are under way with the Ministries of Jobs, Trade and Technology (JTT), and Advanced Education, Skills and Training (AEST) with a view to developing options for addressing this part of the commitment.

Issues and considerations for the development of options for a BC registry

Some other issues and considerations that could help influence the development of options for a BC registry include:

- **How the registry would fit into the context of BC's overall TFW strategy** – s.13,s.16,s.17

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s.16;s.13;s.17

s.13,s.16,s.17

CONCLUSION/Next Steps: To be discussed with the Minister. However, next steps will need to include:

- Continued discussions with JTT and AEST to develop options to support the labour market development part of the mandate letter commitment.
- Based upon initial feedback from the Minister, continue work on fleshing out the options, their implementation and fiscal considerations, and pros and cons.
- s.12,s.13
- Consultations (with the federal government? With stakeholders?)

APPENDICES:

1) Prohibited Practices Under Manitoba's and Saskatchewan's TFW Registry Legislation
2) Key Features of the Registry Under Option 1
3) Key Features of the Registry Under Option 2

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Appendix 1

Prohibited Practices Under Manitoba's and Saskatchewan's TFW Registry Legislation[7]	
Manitoba	**Saskatchewan**
• Recruiters forbidden from charging recruitment fees • Employers forbidden from recovering any costs incurred by the employer in recruiting the worker • Employers are forbidden from reducing	• Recruiters and employers are forbidden from charging recruitment fees • Employers forbidden from recovering any costs incurred by the employer in recruiting the worker

[7] Neither Manitoba nor Saskatchewan explicitly identify housing, human trafficking, sexual exploitation, failure to comply with applicable labour legislation, or bullying and abuse as prohibited practices, presumably because these matters are addressed under other legislation.

the wages of a foreign worker, or from reducing or eliminating any other benefit or term or condition of employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker, and any agreement by the foreign worker to such a reduction or elimination is void.	• Employers are forbidden from reducing the wages of a foreign worker, or from reducing or eliminating any other benefit or term or condition of employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker, and any agreement by the foreign worker to such a reduction or elimination is void. • Producing or distributing false or misleading information • Taking possession of or retaining a foreign national's passport or other official documents or property • Misrepresenting employment opportunities, including misrepresentations respecting position, duties, length of employment, wages and benefits or other terms of employment • Threatening deportation or other action for which there is now lawful cause • Contacting a foreign national or a foreign national's family or friends after being requested not to do so by the foreign national • Taking action against or threaten to take action against a person for participating in an investigation or proceeding by any government or law enforcement agency or for making a complaint to any government or law enforcement agency • Taking unfair advantage of a foreign national's trust or exploiting a foreign national's fear or lack of experience or knowledge.

Appendix 2

Key Features of the Registry Under Option 1

s.13,s.16,s.17

Appendix 3

Key Features of the Registry Under Option 2

s.13,s.16,s.17

MINISTRY OF LABOUR
DECISION NOTE

Cliff #: 54311

Date: November 3, 2017

PREPARED FOR: Honourable Harry Bains, Minister

ISSUE: Options for Review of the *Labour Relations Code*

BACKGROUND:

The Minister of Labour is responsible for the *Labour Relations Code* (the "Code") which is primarily concerned with collective bargaining and labour-management relations in the province, including the relationship between a union and its members. The Code guarantees the right of every employee to join a union and prohibits conduct that is likely to interfere with the exercise of an individual's rights under the Code.

The Code establishes the BC Labour Relations Board (BCLRB) which is an independent, quasi-judicial administrative tribunal with the mandate to mediate and adjudicate disputes under the Code. The BCLRB has two divisions: an Adjudication Division which is primarily responsible for hearing and resolving disputes arising under the Code by way of written submissions and oral hearings; and a Mediation Division which is responsible for services related to collective bargaining, grievance settlement, and conflict resolution programs.

The BCLRB is currently staffed with 8 Order-in-Council (OIC) appointments made up of 4 representatives that come from an employer background and 4 representatives that come from an organized labour background. One of the appointees serves as Chair, another as Associate Chair of the Adjudication Division, and a third as Registrar. There is currently a vacancy for a Vice Chair (from an employer background) and the Chair – both of which were posted publicly with the Crown Agencies Resource Office until October 23, 2017. CARO has advised there are 6 applications for the Chair position and 14 for the Vice Chair.

Effective April 1, 2017, the Ministry of Attorney General assumed responsibility for the budget of the BCLRB and for the provisions of the Code that govern the administration of the BCLRB, including appointments. For example, the last Chair of the BCLRB, Brent Mullin, had his OIC rescinded by Minister Eby after consultation with the Minister of Labour.

Minister Bains' mandate letter from Premier Horgan outlines an expectation that the Minister will make substantive progress on the following:

> Ensure British Columbians have the same rights and protections enjoyed by other Canadians by reviewing the *Labour [Relations] Code* to ensure workplaces support a growing, sustainable economy with fair laws for workers and businesses.

In 1992, a comprehensive review was undertaken by a Sub-Committee of Special Advisers (Vince Ready, John Baigent, and Tom Roper). Their report, which was published in September 1992, proposed a first draft of a new Code (which ultimately was established in place of the *Industrial Relations Act* in January 1993).

Section 3 of the Code provides the Minister with the authority to appoint a Committee of Special Advisers (Section 3 Committee) to undertake a continuing review of the Code and labour management relations. The Section 3 Committee may be directed to provide the Minister with annual evaluations of the functioning of the Code, as well as to make recommendations with respect to potential legislative amendments or to any specific matter referred to the Section 3 Committee by the Minister. Section 3 was introduced into the Code in 1993 based on the 1992 review in which the sub-committee recommended that government put into place a mechanism for an ongoing review of labour relations legislation with a view to ensuring that future changes to the law would be both incremental and measured. This recommendation was largely motivated by the Sub-Committee's concern with the destabilizing effects of past legislative changes that favoured one side or the other, creating a kind of "pendulum" of labour law in BC. The first Section 3 Committee was established in 1997.

In 2002, the Minister convened a new Section 3 Committee to assist him in understanding how 14 specific issues had impacted labour relations and economic development in the province and whether there was a need for the Ministry to address these issues. On April 11, 2003, the Committee delivered an informed and objective discussion of the issues. In response to the 2003 report, government made no changes to the Code due to the fact that for many of the issues, the Committee recommended no change and/or to monitor the existing situation. In addition, some of the potential Code changes were seen as contentious or complex and required further study. As such, the Code has not undergone any comprehensive changes since those that occurred in 2001 and 2002 (see Appendix 1). However, since 2003, the Committee has been used on several occasions to provide advice on more focused and singular issues, such as in 2007 when it issued a report on the use of members at the BCLRB.

As of March 31, 2017, the members of the Section 3 Committee were:

- Daniel Johnston, chair.
- David Vipond, union representative.
- Bruce Laughton, union representative.
- Eric Harris, employer representative.
- [Vacant], employer representative.

s.13,s.22

It should be noted that both Alberta and Ontario recently introduced proposed, far-reaching reforms to their respective labour relations laws, impacting such areas as union certification. In Alberta, in March 2017, government engaged noted arbitrator Andy Sims, QC to conduct a review of their *Labour Relations Code*. Following Mr. Sims' review, 340 written

submissions, and the Ministry of Labour meeting with employer stakeholders, Alberta passed *Bill 17: Fair and Family-friendly Workplaces Act* in June 2017. In June 2017, Ontario introduced the *Fair Workplaces, Better Jobs Act 2017*. Ontario's Bill, which is not yet law, followed a two year "Changing Workplaces Review" led by two Special Advisors and culminated in a final report with 173 recommendations.

While the Ministry has not done a full legal analysis on the changes, it appears that in many cases, the Alberta and Ontario changes to their labour legislation are moving to align their statutes more closely with what already exists in BC. One notable exception to this is that Alberta has implemented card check certification and Ontario has proposed card check for specific sectors (temporary help agency industry, the building services sector and home care and community services industry).

DISCUSSION:

As outlined above, the Minister's mandate letter is clear that a review of the Code is required.

Scope of the Review

In meetings with the table officers of the BC Federation of Labour and separately with affiliate unions, there is near unanimity that over the past number of years, the perception is that the Code and the BCLRB have not been as fair and balanced as the could be. From the perspective of many unions, the Code and the BCLRB as currently configured present challenges or barriers to the organization of workers. In addition, there are concerns that there are not enough resources at the BCLRB and in the employment standards system (which provides support to the BCLRB with the voting processes under the Code) to deal with union certification issues. The view is that the lack of resources is resulting in delays that provide opportunities for some employers to engage in unfair labour practices that impact the ability of employees to freely exercise their choice to join a union. Based on these and other concerns the Ministry has heard from stakeholders, the Ministry has drafted proposed Terms of Reference for the Minister's consideration (see Appendix 2).

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It should also be noted that Premier Horgan said during the election campaign that if the NDP formed government, there would be a change to the Code related to the trade union certification process. Specifically, the current process that requires employees who want to unionize to take a vote by secret ballot would be replaced by a "card check" system where a majority of union members must sign union cards to certify. MLA Andrew Weaver, leader of the Green Party, has said publicly that he does not support this change. s.13

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Process of Review

There are models for reviews undertaken recently in other jurisdictions as well as provisions within the existing Code that provide a mechanism for a review. There are several common

elements amongst the models. First, the review is conducted outside of government by an individual or a panel of individuals who are recognized as experts in the field of labour relations. Second, the review process allows for consultation with the labour relations community and the submission of a report to the Minister.

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RECOMMENDATION AND NEXT STEPS:

For discussion with the Minister. s.13,s.17
s.13,s.17

Appendix 1: *Labour Relations Code* Amendments Since 2001.
Appendix 2: Draft Terms of Reference for *Labour Relations Code* Review Panel.
Appendix 3: Possible Names for *Labour Relations Code* Review Panel.

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Appendix 1 – *Labour Relations Code* Amendments Since 2001

Year	Legislative Amendments
2001/ 2002	• Addition of new duties for the BC Labour Relations Board and for others with responsibilities under the Code, with the stated goal of fostering the employment of workers in economically viable businesses and to recognize the rights of employees, trade unions, and employers. • The right of employers and unions to communicate with employees about unionization matters clarified. • Mandatory secret ballot vote in the union certification process reintroduced. • Education made an essential service. • Mandatory sectoral bargaining in the construction sector repealed.
2008	• Introduction of a requirement for the Labour Relations Board to issue its decisions on applications and complaints within time periods prescribed by Ministerial Regulation. The timeline was established by Regulation in 2012.

Appendix 2 – Draft Terms of Reference for *Labour Relations Code* Review Panel.

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Appendix 3 – Possible Names for *Labour Relations Code* Review Panel.

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