

MINISTRY OF LABOUR
DECISION NOTE

Cliff #: XXXXX

Date: November 1, 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 For example, the last Chair of the BCLRB, Brent Mullin, had his OIC rescinded by Minister Eby^{s.13}

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 the 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.

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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.^{s.13}

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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.

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.

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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	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• 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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