



British
Columbia
Construction
Association

Labour Relations Code Review

BC Construction Association

November 2018

Overview

The Labour Relations Code Review Panel released a report detailing 29 recommendations regarding BC's Labour Relations Code in August 2018. The Panel was appointed by the Minister of Labour, the Honourable Harry Bains. It has been more than 15 years since a Panel was convened and a review conducted.

The recommended changes have not yet been proposed in the Legislature or passed into law. The period for public feedback ends November 30.

Details on the process can be found here:

<https://engage.gov.bc.ca/govtogetherbc/consultation/labour-relations-code-review/>

The BCCA has filed an official response to the Honourable Harry Bains, Minister of Labour, prior to the deadline. The Minister of Labour reserves the right to introduce additional changes or amendments that deviate from the recommendations in the Panel's report.

Taken as a whole, BCCA believes that the report demonstrates the balance that industry is seeking, and supports collective efforts for a productive and resilient industry. We advise Minister Bains to accept the recommendations in the report as they are presented. We believe this will serve to harmonize tensions that may be building in BC's construction industry following the recent introduction of policies that are largely considered to give significantly preferential treatment to designated trade unions that comprise 10% of the workforce.

Key points that bring BCCA to this recommendation include:

- There are no sweeping changes that will impact the construction industry significantly.
- We agree strongly with the recommendation to maintain the secret ballot and respect the privacy of the employees.
- While we do not agree that industry-specific review commissions of the code are required, we welcome further discussion on this topic.
- There is some concern that the ability of unions to lock in and raid is increased while the restrictions and controls on employers are increased, but we do not believe the recommendations are egregious.
- There is some concern that the privacy of employees is being compromised in order to give unions greater and more extended access to them, but again we do not believe the recommendations are egregious.

Background

The Labour Relations Code:

- The *Labour Relations Code* is primarily concerned with collective bargaining and labour-management relations in BC.
- The Code applies to all employers in the province.
- The Code guarantees:
 - the right of every employee to join a union.
 - Employers freedom to be members of employers' organizations.
 - Many of the Codes provisions are designed to protect these fundamental freedoms.
- The Code prohibits any conduct that is likely to interfere with the exercise of an individual's rights under the Code.
- Anyone who engages in conduct prohibited by the Code commits an unfair labour practice.
- The Code governs most aspects of the relationship between unions and employers.
- It contains provisions designed to promote collective bargaining and sets out certain basic standards for every collective agreement.

The BC Labour Relations Code Review Panel:

There is provision for the Minister of Labour to appoint a committee of special advisors (3) to review the Code. The committee reviews the operation of the Code accepts submissions and representation from employers, unions and citizens and representative organizations and makes recommendations to the Minister on the need for changing the Code.

The committee's stated position was to come up with balanced recommendations that everybody can buy into and would be sustainable, in order to avoid a pendulum swing.

BCCA believes that the panel maintained that objective throughout and that they have produced a balanced set of recommendations.

Employer perspective:

- Generally, employers acknowledged that a labour code review was needed. The last review was over 15 years ago.
- Labour codes in BC must reflect reality and provide balanced protection for both employers and employees
- There have been significant changes to the workplace over the last two decades that should be considered in the Labour Code (for example, technological changes)

- The current Labour Code has successfully delivered labour peace for BC’s private sector for nearly 20 years.

Construction employer perspective:

- It is worthwhile noting that there has not been a strike in BC’s construction industry in over 30 years.
- Construction is treated in its own right in the Labour Code, with specifics on how the labor relations process works (for example, union certification votes, negotiation and Collective agreements).
 - a. The majority of the Panel recommendations relate to how the Code affects those processes, and are therefore relevant specifically to construction employers working under a collective agreement.
- The Building Trades Council and Construction Labour Relations Association were created as a result of previous Code review recommendations that set out how collective bargaining would be conducted. Both sides expressed concerns with the current situation:
 - The Building Trades Union recommended the abandonment of Sectoral Bargaining. (Sectoral bargaining is an aim of trade unions to reach a collective agreement that covers all workers in a sector of the economy. It is the counter to Enterprise Bargaining, where agreements cover individual firms).
 - CLR expressed concern with the lack of alignment between the Federal Jurisdictional Assignment Plan (JAP) and the Federal JAP.
- The Panel felt it did not have enough detail to make recommendations based on their submissions other than to say that the concerns should be dealt with by a separate Industry panel which is currently provided for in the existing code.
- A recommendation specific to construction is a proposed Amendment to Section 19, rewriting the definition of construction in Section 19(1). We believe this proposed definition is identical to the definition that was in effect up to 2002, and will have little or no impact on the industry in general:
 - “construction” means construction, alteration, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines, dams, tunnels, bridges, railways, canals or other works,

- but does not include (a) supplying, shipping or otherwise transporting supplies and materials or other products to or delivery at a construction project, or (b) services directly or indirectly related to servicing and maintenance of the premises.
- A number of unions advocated for the elimination of the stated Code purpose that it “Foster the employer of workers in economically viable businesses.” This removal was not supported by the Panel.

The most noteworthy recommendations include:

- Under the “**employer free speech**” provision, the Panel recommends returning to language that is intended to prevent employers from “anti-union campaigns”.
 - Currently employers have the right of free speech provided they do not act in a coercive or intimidating manner.
 - This represents little or no change from the previous code, but is a key element for employers to be aware of so they do not act in a manner that can be deemed an unfair labour practice.
- Allow union **membership cards** to remain valid for a period of 6 months, instead of 90 days.
 - This is expected to increase the duration of union organizing drives, which subsequently increases time periods during which employer restrictions would be in place
 - Currently in construction there is also a regulation that requires a union relying on ongoing membership to an employee to sign a document stating they want the union to apply for certification of the current employer. This was to avoid “drive-by” certification applications. There is no mention of this regulation in the Report so we assume this regulation will stand.
- Enable the Board to require an employer to provide a **list of employees** when an application for certification is filed. Employee support for the filed application does not appear to be a prerequisite for access to such a list.
 - The Panel does not seem to accept the union’s arguments that the list should include contact information such as phone and email.
 - The overriding interest at issue in considering employee lists is the employees’ privacy rights. The longstanding approach of the Board respects the employees’ privacy rights by ordering an employee list be disclosed only when absolutely necessary for the determination of an issue under the Code, typically when determining the threshold in a certification application.

- We believe this is evidence of the balanced approach the panel maintained. This recommendation runs counter to the stated position of some union representatives by respecting the privacy rights of the individual ahead of any union organization.
- The **Raid period** for construction is recommended to change to July and August of the third year of a collective agreement and of each year thereafter.
 - Limited raids to the third year or later is positive for employers, but the July/August time frame may increase the number of raid applications because these are the periods of greatest seasonal employment.
- Retain the **secret ballot** vote in the certification process.
 - The union-side panel member dissented from this recommendation, instead endorsing a return to card-based certification. However this was not the majority ruling.
 - Again we believe this is evidence of the balanced approach the panel maintained. This is the critical element of the code for all employers: a removal of this secret ballot would have been significantly preferential to union organizations.
- Require that a **vote relating to certification or decertification occur** within five days following an application, rather than the current 10-day requirement.
- Provide the Labour Relations Board greater **discretion to certify a union** without a vote, when the Board determines the employer has engaged in unfair labour practice(s).
 - When combined with the restrictions being placed on employer free speech rights, this presents the potential for certification without majority support from employees.
- Apply the **successorship provisions** of the *Code* whenever contracts change hands in the building cleaning, security, bus transportation, and healthcare industries.
 - The outcome here is that the new contractor will be bound by the previous contractor's union certification and collective agreement. It may significantly increase the costs of obtaining these services in these sectors.
- Increase the **statutory freeze period** following certification (during which period terms and conditions of employment cannot be altered) from 4 months to 12 months, and prohibit decertification for the same 12-month period.
- Ensure **compliance with the requirement to file** all collective agreements with the Board by not allowing parties to a collective agreement who fail to comply to rely on the collective agreement for Code.

- Remove the requirement to have a **strike vote** as a prerequisite to obtain the assistance of a Board mediator for first collective agreements.
- Authorize the Board to impose **fin**es of up to \$5,000 for individuals and \$50,000 for companies who fail to comply with a Board order.
 - This is a five-fold increase on the previous amounts.
- Remove **education** as a designated essential service.
- Increase **funding** for the Labour Relations Board.

Conclusion

In its earliest form, BCCA was primarily a Labor Relations Organization. This is not surprising given that 50 years ago over 85% of the construction industry operated under collective agreements. BCCA funding at that time was derived from “a cents per hour” assessment placed within collective agreements. This approach was abandoned for a variety of reasons, but primarily because the Building Trade Unions took the position that they should be able to influence BCCA policy development due to the hourly levy. The BCCA Board of Directors felt that it was essential for BCCA to advocate independently.

Today, approximately 15% of the industry operates under collective agreements. BCCA has maintained its position as a non-labor relations organization for many decades, and has maintained a similar position as a non-partisan organization providing services and support to the entire BC Construction Industry.

Regardless, BCCA must be aware of what is transpiring within the arena of Labor Relations, particularly with new policy developing in BC that favours designated unions at the risk of the overall productivity and resilience of the industry.

Ultimately, the outcome of the Panel’s work is unknown until the Minister of Labour if he will act according to their recommendations.

In collaboration and review with other organizations in BC’s industry representing all labour affiliations, BCCA submits a strong endorsement of the panel’s balanced recommendations.