

March 18, 2024

BC Labour Code Review Panel  
Sent by email: [lrcreview@gov.bc.ca](mailto:lrcreview@gov.bc.ca)

Dear Panel Members,

**Re: British Columbia Labour Relations Code Review**

As we did five years ago when legislative changes were being considered, the Progressive Contractors Association of Canada (“PCA”) is pleased to have the opportunity of presenting our comments and recommendations in respect to the British Columbia *Labour Relations Code* (the “Code”) review, as well as providing other comments and concerns relating to provincial labour relations in general. Like your previous review, the PCA would welcome the opportunity to meet directly with the Panel.

We recognize that the call for submissions is an important part of the review process, along with your in-person meetings that are scheduled. However, we do respectfully suggest that, should specific areas be identified as needing further policy development, the Panel should flag these areas so that the labour relations community can make further detailed submissions to aid the Panel when considering their recommendations.

**Introduction**

The PCA is the voice of progressive unionized employers in Canada’s construction industry. PCA represents construction and maintenance contractors across Canada, with substantial activity in BC. PCA’s national membership includes around 150 contractor organizations, and PCA members directly employ more than 40,000 employees, and many thousands more in affiliated organizations. PCA members have unionized relationships primarily with non-Building Trades unions (unions that operate on an industrial or multi-trade basis), but members also include Building Trades contractors and non-union contractors.

PCA is pleased to see, and agree with, the general tenor of the terms in your community letters to stakeholders. We fully appreciate that your terms of reference include the recognition from the Minister’s mandate letter to “ensure our labour law is keeping up with modern workplaces.” One of the most important aspects of our modern workplaces is the proportion of workers who no longer work under the traditional building trades union model. Today, of the 90,000 people working in non-residential construction, roughly 30,000 are unionized of which our PCA members represent over one-third of those unionized workers in BC.

Since our founding in 2000, PCA has worked to ensure fair access to work opportunities for contractors and workers by promoting a legislative framework and industry practices that establish a level playing field for all construction industry participants. PCA believes fairness means paying workers competitive wages and benefits and, most importantly, keeping them working. This can only be accomplished if there is an economic landscape in BC that supports investment and thriving businesses. We believe that fairness for workers and companies is best derived from stronger, more collaborative partnerships between employees and employers, rather than what tends to be a more adversarial relationship.

Therefore, our submission will again focus on encouraging initiatives that foster collaboration, cooperation and build trust, and discourage proposals that undermine these principles that are so necessary to BC's long-term economic success for all British Columbians.

### **Proposed Code Changes**

PCA provides comments on the following issues:

#### **Open periods – Raiding Periods**

In 2019, the BC Government's Labour Relations Code Review Panel (the "**Panel**") recommended that there be open periods (also known as raiding periods) every 3 years for all industries. Against the recommendation of the government's own Expert Panel, it was decided that in the construction industry there would be annual open periods every July and August

There are sensible reasons for having an open period every 3 years. For contractors, annual raids can be costly to their businesses. Annual open periods can result in lost productivity because a raid is disruptive, destabilizing, and counterproductive. The cost impact and prospect of a potential raid every year on business would be like the province having to run an election each year. These current rules for the construction sector lead to instability in our industry.

***PCA recommendation #1: that the Labour Code be amended so the Open Period falls during the last two months of a collective agreement, at a minimum every 3 years.***

#### **Secret Ballot Votes**

The Panel also recommended that on certification matters, the determination of success or failure should be made in each case on the basis of a secret ballot vote. This is the procedure provided in labour legislation in almost all Canadian jurisdictions.

In the construction industry, employees belong to more than one union. Membership cards are not, and should not, be viewed as an indication of whether the employee supports a particular trade union for a particular project or employment relationship. Employees often support whichever union happens to be in place in respect to their employment. Without a secret vote, the employer invariably is left questioning whether its employees actually do support the applicant trade union in certification matters. This then often leads to problems in negotiating and concluding collective agreements.

The only effective determination that satisfies these concerns is to have the matter determined by a secret ballot vote. This rule as well is supported by the International Labour Organization (ILO). Any concern about an intervening delay in processing a certification application where a secret ballot vote is compulsory can be removed by having the vote taken within 2 weeks of the date of the application, with the ballots uncounted while the application is processed, and validity concerns and legal requirements are dealt with. If the application is valid, then the votes are counted. This is the process that is properly carried out in other jurisdictions.

***PCA recommendation #2: that the Labour Code revert to the previous requirements for a representation vote and move away from automatic certification.***

## Common Employers and Successorship

In construction, there should be no change to the current position. In recognition of the long-standing ability to operate businesses on a double-breasted basis, employers have structured their enterprises to accommodate the reality that owners of projects have different views as to their preference relating to union status. To change these practices would be destructive of industry stability and is clearly not needed at a time when this industry is doing well overall.

***PCA recommendation #3: no change be made to existing common employer provisions and successorship rights within the Labour Code.***

## Collective Bargaining Models

There has been some suggestion that BC should legislate different and varying collective bargaining models for this province, such as sectoral bargaining. It is astonishing to the PCA that the Panel or Government would want to interfere with what has been such a success generally in this province.

Sectoral bargaining would be a significant change to the structure and dynamics of BC labour relations. It would encroach upon individual free bargaining and would likely run afoul of the *Canadian Charter of Rights and Freedoms*. Nothing is broken that must be fixed. Please do not create significant unrest where it is not needed.

***PCA recommendation #4: reject any suggestion to implement sectoral bargaining within the construction sector.***

## Threats of Fines or in respect to Pensions and Benefits

There should be clear language in the *Code* that prohibits unions threatening employees with fines or loss of pension or benefits because of their union affiliation. It is a tactic that some unions employ to pressure and punish individual workers. It is a restraint of trade, and it is contrary to the interests of workers seeking to provide for their families.

***PCA recommendation #5: amend the Labour Code to provide clear language that prohibits unions from threatening workers with fines or loss pension and other benefits due to union affiliation.***

## Duplicate Jurisdictions

It is untenable for employers with collective agreements to find that in situations where an employee has a claim against an employer for a human rights violation, employment standard issue, labour code violation, WorkSafe BC issue or any other avenue to file a grievance, the employee is entitled to choose multiple remedial tracks to follow: through the various provincial tribunals (such as the Human Rights Tribunal), to grievance arbitration that is adjudicated upon by an arbitrator, or conceivably to pursue both these options. When employees are bound by their collective agreement, their recourse should be limited to grievance arbitration only.

In Alberta, there is a provision in its Labour Relations Code that allows for marshalling of related proceedings from multiple forums. It helps to avoid unnecessary litigation and duplicated use of party and government resources. It also helps to handle disputes efficiently.

***PCA recommendation #6: amend the BC Labour Relations Code to allow for the marshalling of various grievance avenues through a collective agreement's arbitration process.***

## Project Labour Agreements/Community Benefits Agreements and Union Bias

Since the last Labour Relations Code Review, the Government of BC has expanded its use of various forms of restrictive Project Labour Agreements (“PLAs”), including the Community Benefits Agreements (“CBAs”), that privileges those affiliated to one particular labour model at the expense of all others. Our members in BC have for too long been subject to this obvious and open bias in respect to union affiliation. The bias understood by all our members is that the BC Government favours the BC Building Trade Unions (“BTU”).

Our members’ employees have been organized by an alternative union to the BTU, CLAC. CLAC has more than 65,000 members and more than 10,000 members working in BC. Most of these members are BC residents and taxpayers. Most of these members and their families vote. We fail to see the fairness of punishing workers because they have chosen to exercise their right under the *Code* to be represented by a union that is an alternative to the BTU.

This continued attempt to divide the construction industry is not sensible or fair. The Government does not gain more support with these biased measures. It loses support because of these biases. Our contractors’ workers and their families recognize what is happening and that it is unjust.

PCA submits that the exclusion of all but BTU workers and contractors from the CBAs and other restrictive PLAs on public infrastructure projects is unjust discrimination that should not continue. Valuable construction work should be open for all to bid on through a fair and open tendering process.

Construction works best when there is competition. Competition has created tremendous benefits for workers, the public, and the development of construction projects in BC. It is surprising that the Government would seek to hinder competition in order to favour the BTU. That is unhelpful to our community. Having unions and contractors competing is healthy for BC, just as competition is healthy for all economies. It forces organizations to achieve greater efficiency and effectiveness.

PCA strongly rejects the use of restrictive PLAs and CBAs as they are, in our view, quite regressive for a small, open economy like BC. The use of these restrictive models also hinders the overall competitiveness of our economy.

Furthermore, the PCA asks that this Government not exclude a majority of workers and contractors from work opportunities and not deprive taxpayers of the benefit of competition for this work. Fostering monopolies should not be any Government’s mandate or principle. BC should return to sensible competitive industry practices to the benefit of all British Columbians.

***PCA recommendation #7: eliminate the use of restrictive PLAs/CBAs that exclude the majority of workers and contractors from work opportunities and thus deprive taxpayers of the benefit of competition through a fair and open tendering process.***

## Conclusion

PCA largely favours leaving the Labour Relations Code alone, however, there are several factors to consider that can improve BC’s labour legislation. The considerations we put forward would respect worker choice and freedom, promote competition, foster stability, enhance efficiency and generate investment and economic growth.



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of Canada

PCA appreciates the opportunity to make a submission on these important matters. We hope the Panel takes this opportunity to recommend sensible changes that will foster competition and fairness for all workers, unions, and contractors. While our organization appreciates the chance to be consulted, we are concerned though with the compressed timetable for your review ahead of a provincial election later this year. Should the government proceed with changes, we hope there is a chance to be further consulted over the specific proposed changes.

Thank you again for allowing us to share our thoughts. Please do let us know if you need any further information.

Respectfully yours,



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Progressive Contractors Association of Canada (PCA)

cc. Paul de Jong, President and CEO, PCA  
Darrel Reid, VP Public Affairs, PCA