



Business Council of  
British Columbia

December 4, 2006

Standing Committee on Human Resources, Social Development,  
and the Status of Persons with Disabilities  
Sixth Floor, 180 Wellington Street,  
Parliament Buildings  
Ottawa, Ontario

**Re: Bill C-257, an Act to Amend the *Canada Labour Code***

The Business Council of British Columbia would like to comment on Bill C-257, an Act to Amend the *Canada Labour Code* (the "Code"), which is currently before the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities (HUMA) for study.

By way of background, the Business Council of British Columbia, established in 1966, is an association representing approximately 200 large and medium-sized enterprises engaged in business in British Columbia. Our members are drawn from all major sectors of the provincial economy, including forest products, mining, manufacturing, transportation, agri-food, telecommunications, information technology, financial services, energy, tourism, retail, construction, healthcare, education and the professions. Taken together, the corporate members and the associations affiliated with the Business Council are responsible for one-quarter of all jobs in British Columbia.

Before commenting on the substance of Bill C-257, the Business Council would like to express our disappointment at being denied an opportunity to appear before the Standing Committee.

As British Columbia has had "replacement worker" legislation since 1993, the Business Council believes it can offer the Committee a unique perspective on the effect such legislation has had on the province. We note that there are no organizations from Western Canada appearing before the Committee. We believe that this is a serious omission and that HUMA would benefit from hearing from these organizations.

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The Business Council also believes that the limited timeframe for appearances before the Committee is inadequate. Consultation for amendments that could dramatically change the fine balance that exists in the current *Canada Labour Code* require more time than currently appears to be allotted.

We are aware that many submissions to your Committee will quote statistics and speak at a “national” level. We do not intend to repeat those statements and arguments here. Our comments are based on some of our experiences dealing with replacement worker legislation in British Columbia, as well as some general statements on amending labour legislation.

Politics does not necessarily make good public policy

Replacement worker legislation was introduced into the British Columbia *Labour Relations Code* (the “BC Code”) in 1993. This was done after a careful review of the *Code* by a three person Committee. However, the provisions in the current *BC Code* far exceed anything recommended by the Committee, even those recommended by the Labour representative on that Committee. NDP Cabinet members of the day proposed the current language. The employer community in British Columbia has always believed the *BC Code* to be unbalanced because of those particular provisions.

In the mid 1990’s, a former Liberal government used the same type of consultative process to review Part I of the *Canada Labour Relations Code*, but with a different outcome. The *Code* was reviewed by what was known as the Sims Task Force. After wide consultation with employers, unions, and others, the Task Force recommended that there should be no general prohibition on the use of replacement workers. Rather, language was proposed which prohibited the use of replacement workers where it is demonstrated that the employer is attempting to undermine the union’s representative capacity. The government of the day accepted those recommendations and they were enacted in 1998. Politics was kept out of the process and the solution.

It is interesting to note that the BC NDP government of the early 1970’s rejected the notion of replacement worker legislation. More recently, the NDP governments of both Saskatchewan and Manitoba have rejected requests from the labour movement for replacement worker legislation. These three governments determined that replacement worker legislation upset the balance of labour relations legislation and was not good for the economy. Politics did not trump good public policy in these cases.

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### The need for balance

Many people believe the right to strike is balanced by the right to lockout. We believe it is more than that. We assert the right of employees to strike is balanced by the employer's right to operate, a contention which is supported by the 1968 Woods Task Force on Labour Relations. By allowing employees to strike while not allowing the employer to keep operating upsets the balance labour relations legislation strives to meet. There is nothing in the proposed legislation which prohibits striking employees accepting strike pay from the union or from taking employment at another employer not on strike. Economically, the striking employee will receive compensation during the labour dispute while the employer is severely restricted in what it can do. To balance this out, employers must have the right to keep operating during a labour dispute.

We believe, as the Sims Task Force stated in their report entitled "Seeking a Balance," a balance must be achieved so all parties believe the process to be fair for all. These proposed amendments will not, in our view, achieve a balanced *Canada Labour Code*. Tri-partite meetings at the federal level over the last several years have ensured workable legislation acceptable to all parties. We believe this is the proper route to follow when amending labour legislation.

What is being proposed in Bill C-257 will tip the balance of the *Canada Labour Code* in favour of unionized workers. If this were to happen, it could encourage future governments to enact further amendments to the *Code* which will favour either unions or employers. Amendments made to labour legislation in isolation of any examination of the effects the changes to legislation may have is, in our view, inappropriate. It is detrimental to good labour-management relations. Tripartite solutions work best for all stakeholders.

### Negative impact on investment

Members of the Business Council who are involved in attempting to attract investment to the Province have related stories to us in which potential investors are very concerned about BC's strike replacement legislation. In a number of cases, potential investors have decided to take their investment money elsewhere.

Canada does not operate in a vacuum. Investors seek stability and familiarity. Investors prefer, generally, the "same rules" across jurisdictions. If one jurisdiction has legislation

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which is substantially different from what they are used to and which has the potential to restrict their operations, then they are very reluctant to invest their dollars in that jurisdiction.

Take, for example, an individual invests in an operation in a jurisdiction with replacement worker legislation. At some point in time, the operation becomes unionized; that is a risk shared and accepted by investors in most North American jurisdictions. However, if the employees of this operation go on strike and the investor cannot continue to operate, he will in all likelihood, either move or expand his operations in another jurisdiction where he knows he can continue to operate.

Effect on negotiations

Business Council members report they must adopt a different bargaining strategy in BC versus operations they have in other parts of North America. Knowing they cannot continue to operate during a labour dispute has resulted in employers having to assume different tactics while bargaining. Many disputes have taken longer to resolve and the agreements, when finally reached, are more expensive than in other jurisdictions.

For example, the retail food industry collective agreements in British Columbia are much more costly than others in Western Canada. This has resulted in a rise in non-union stores, where costs are cheaper, particularly on Vancouver Island. Union density in this sector on the Island has fallen as unionized stores have consolidated or closed because they are no longer competitive.

On the federal side, the landscape is changing and one must remember there is more non-union competition than there once was in several of the industries covered by the *Canada Labour Code*. For example, Canada Post no longer has the monopoly on hard copy communications deliveries. There are many more non-union courier and delivery companies operating now than several years ago. Non-union Westjet and other non-union airlines could fill in on the major routes if Air Canada was to suffer a lengthy labour dispute.

Effect on small and medium size enterprises (SMEs)

Many members of the Business Council use SMEs as suppliers or contractors. If these SMEs cannot operate during a strike or lockout, they will undoubtedly lose their contracts. If they cannot resist unrealistic demands by the union and have to acquiesce to more expensive

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collective agreements, again they put their contracts at risk. In the long run, the very employees whom those who support replacement worker legislation purport to want to protect, may lose their jobs as their employer becomes uncompetitive, or loses a contract due to a lengthy work stoppage.

In conclusion, we see no need to proceed with these amendments to the *Canada Labour Code* at this time. We believe there must be wide consultation within the employer and labour communities across Canada. We recommend the HUMA Committee consult more widely before making substantive changes such as those contemplated in Bill C-257. We further recommend the Committee hold hearings in British Columbia to better understand the effect this type of legislation has had on our Province. Given the opportunity, we would like to offer additional comments and examples to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jerry Lampert', with a stylized flourish at the end.

Jerry Lampert  
President and Chief Executive Officer

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