



Business Council of  
British Columbia

**Submission to the  
Standing Committee on  
Human Resources, Social  
Development, and the Status  
of Persons with Disabilities**

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

January 2007





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The Business Council of British Columbia would like to thank the Standing Committee for the opportunity to present our views on Bill C-257, an Act to Amend the *Canada Labour Code* (the "Code").

By way of background, the Business Council of British Columbia, established in 1966, is an association representing approximately 205 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.

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. The comments which follow are based on some of our experiences and observations.

1. History of BC Replacement Worker Legislation

In 1992, a "Sub-Committee of Special Advisers" (Sub-Committee) was appointed by the NDP Government to review the existing *Industrial Relations Act* (the *Act*). The Sub-Committee included one representative from the employer community, one from the labour community and a neutral chair. The Sub-Committee proposed a new *Labour Relations Code* (the *BC Code*) in which there was 95% agreement. However, at the end of the day, there were 4 outstanding issues on which the Advisers could not agree, one of which was replacement workers. The employer adviser recommended that no replacement worker provisions should be added to the new the *BC Code*. The neutral chair recommended that in cases where replacement workers were used in a labour dispute, a mechanism be established to solve the dispute quickly. The labour adviser recommended a limited ban on the use of replacement workers. However, when the new *BC Code* was enacted, the provisions regarding the use of replacement workers far exceeded anything considered by the Sub-Committee, even those recommendations made by the Labour representative. Rather, the New Democratic government arbitrarily decided to incorporate restrictions on the use of replacement



workers in the revised BC *Labour Relations Code*. The employer community felt at the time, and still believes today, that those provisions unfairly tip the balance of the *BC Code* in favour of trade unions.

The employer community in British Columbia has never supported replacement worker legislation. When the Business Council surveys its members on what legislative changes our members would like to see to labour legislation, the removal of the prohibition on the use of replacement workers consistently tops the list. The employer community continues to press the Provincial Government to remove replacement worker provisions from the *BC Code*.

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.

## 2. Comparison of BC versus proposed Federal Legislation

As much as BC employers find the replacement worker provisions in the *BC Code* repugnant, the provisions proposed in the Federal replacement worker legislation are far more draconian than those found in the *BC Code*. For example, under the *BC Code*, employees who choose to disagree with their union and cross a picket line at the struck location may do so. Bill C-257 would not allow any bargaining unit member to cross the picket line.

Another example of the difference between the BC legislation and the proposed federal legislation is that under the *BC Code*, employers are permitted to move supervisors to a struck location and do work at that location if that location is one at which they "normally" work. Under Bill C-257, employers would be restricted from allowing supervisors and managers to do work at a struck location even if they work at that location. Under BC's legislation, managers and supervisors may perform work at a struck location whereas under the proposed Federal legislation, managers or supervisors would only be allowed to take measures necessary to avoid the destruction of the employer's property or conservation measures. In other words, an employer would not be allowed to continue to produce goods and provide services at the struck location no matter the circumstances.

The effect of these measures would be extremely detrimental, not only to employers, but to the Canadian public at large. For example, in the Telus dispute of 2005, if the employer had not been able to use employees who had crossed the picket lines, as well as replacement workers including management personnel, thousands of customers across Canada would not have been able to have their telephone service installed, activated or repaired.

The measures contained in Bill C-257 are extremely harsh and far exceed anything found in any jurisdiction in North America.

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 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. To quote from the Business Council's Submission to the 1995 Sims Task Force:

"A legislated prohibition on the use of replacement workers would greatly increase regulatory disparities between Canada and the United States, and thus erode Canada's ability to compete and to attract new business investments".

### 3. Need for Balance

In the mid 1990's, a former federal Liberal government used a consultative process to review Part I of the *Canada Labour Relations Code*. This review was known as the Sims Task Force. After wide consultation with employers, unions, and others, the Task Force came to a different conclusion than the 1993 NDP Government of British Columbia. The Task Force recommended there should be no general prohibition on the use of replacement workers. To quote from the Task Force:

"Replacement workers can be necessary to sustain the economic viability of an enterprise in the face of a harsh economic climate and unacceptable union demands. It is important in a system of free collective bargaining that employers maintain that option, unrestrained by any blanket prohibition. If this option is removed, employers will begin to structure themselves to reduce their reliance on their permanent workforces for fear of vulnerability, to the detriment of both workers and employers alike."

The Liberal government of the day accepted the recommendations of the Sims Task Force. The changes made to the *Canada Labour Code* did not contain a blanket prohibition on the use of replacement workers. Since the changes to the *Code* were made in 1999, there has been an absence of controversy over the use of replacement workers in the federal sector. This being the case, why would this Committee upset the fine balance that has been put in place in exchange for legislation that clearly favours the trade union movement?

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. It ignores invaluable broad-based stakeholder input.

In conclusion, we see no need to proceed with these amendments to the *Canada Labour Code*. We believe that any serious review of the *Canada Labour Code* in the future would require extensive stakeholder consultation.