

Make it Fair: Restoring Balance, Fairness and Opportunity in B.C.'s Labour Market

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**Submission by Unifor to the B.C.
Labour Relations Code Review**

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About Unifor

Unifor is the largest private sector trade union in Canada. We represent 315,000 private and public sector employees in all regions of Canada, working in over 20 defined sectors of the economy, including resources, manufacturing, hospitality and transportation.

We thank the Panel of Special Advisors for the opportunity to participate in this important process, and for your attention to our views. Representatives from Unifor and its local unions will participate in the community hearings to be held as part of this process.

Overview: Inequality and the Changing Nature of Work

It is no secret that the nature of work is changing. Disintegrating business norms coupled with lagging government regulation and technological change have eroded employment quality for many British Columbia workers. Non-standard employment is increasingly the norm in all jurisdictions. This is evident in labour market research focused at the national level as well as at provincial and regional jurisdictions¹ which finds that work has become less stable and more precarious across the country. This is in part the result of employment growth in the low wage service sector but there is ample evidence to show that non-standard work is spreading to industries that have not traditionally been recognized as creating precarious and/or non-standard work. Research has also found that insecure and precarious work has profound negative consequences on individuals and families regardless of income and it negatively affects both individual and societal well-being.

In addition to the growing sense of insecurity in the labour market, British Columbia is also home to elevated levels of income inequality which is causing uncertainty and angst for people across the province. According to the BC Poverty Reduction Coalition, “inequality in BC is the highest in Canada and is increasing at a faster rate than most other places in Canada. In the last 10 years, the average household income of the top 1% in BC has increased by 36% while median incomes have stagnated. As with insecure and precarious work, inequality is linked to multiple health and social problems².”

In British Columbia, one of the most prominent factors in the increase in precarious work has been temporary employment. Since the global recession in 2008-09, permanent work has increased by 13% but temporary work, including contract, casual and seasonal employment, has increased by 33%³. Similar trends can be seen in the growth of part-time work and involuntary part-time work. Over the last two decades the share of workers whose hours vary from week to week has grown and the share of workers who are classified as working poor has intensified as well. 7.2% of British Columbians working outside of Metro Vancouver work and live in poverty. In Metro Vancouver that share rises to nearly 9%⁴. These trends are not new, but the level of precarity and the consequences of precarity have been intensifying.

These trends and their consequences provide ample reason for government to intervene and find solutions that can increase employment security and decrease inequality across British Columbia.

¹ See the following to name a few: DePratto & Bartlett, *Precaire Employment in Canada: Does the Evidence Square with the Anecdotes?*, May 2015; Ivanova & Tiessen, *Labour Market Insecurity in Canada: A look at provincial level trends*, Forthcoming; Lewchuk, Lefleche, Procyk, Cook, Dyson, Goldring, Lior, Meisner, Shields, Tambureno & Viducis, *The Precarity Penalty: The impact of employment precarity on individuals, households and communities —and what to do about it*, May 2015; and Tiessen, *Seismic Shift: Ontario's Changing Labour Market*, March 2014.

² BC Poverty Reduction Coalition, *Factsheet on Poverty and Inequality in BC* (May 2016) (<http://www.bcpovertyreduction.ca/wp-content/uploads/2016/07/Factsheet-2016-05-03.pdf>)

³ Statistics Canada, 2018. Labour Force Survey CANSIM Table 282-0080

⁴ Igluka Ivanova, CCPA, 2016. *Working Poverty in Metro Vancouver*

Globally, one of the strongest contributors to decreased precarity and healthy levels of income inequality is the rate of unionization.

Reforming B.C.'s Labour Code

Labour law serves two purposes. The first is a remedial purpose. It identifies unfairness, imbalance, or injustice and tailors a solution to that problem to achieve a balance between the interests of workers and those of employers. Labour law also serves an aspirational function. Statutes are the manifestation of our values. In labour law, those values are linked to the freedom of association that is protected by s. 2(d) of the *Charter of Rights and Freedoms*.

In 2015, the Supreme Court of Canada reaffirmed in a series of decisions ([Saskatchewan Federation of Labour v. Saskatchewan](#), [Mounted Police Association of Ontario v. Canada](#), and [Meredith v. Canada](#)), that for workers to fully exercise their freedom of association, they must be free to join and belong to a union of their choosing, and have the right to engage in a meaningful process of collective bargaining. A fair and balanced statutory labour regime is essential for the protection and promotion of the right of all workers to freely associate.

Unifor submits that the current review of the *Code* ought to consider these questions about the two roles of legislation: **does our current labour regime strike a just balance; and does it reflect and promote Charter values?** With these questions in mind, the following are Unifor's recommendations about how to strengthen worker access to unionization and collective bargaining for a fairer and more equal labour market in BC

Summary of Unifor's Key Recommendations

1. Amend s. 24 of the *Code* to bring back card-based certification.
2. Amend s. 24 of the *Code* to require that where a vote is necessary to resolve an application for certification, it must be held within five working days from the filing of an application.
3. Extend broader based collective bargaining structures within the private sector.
4. Repeal section 8 of the *Code* and restore section 6(1) to the version that predates the Bill 42 amendments.
5. Amend section 35 of the *Code* to deem a sale of business to have occurred for the purposes of s. 35(1) of the *Code* where an employer that provides services to a client ceases to provide those services, and another employer begins to provide the same services to the client.
6. Amend the *Code* to allow trade unions to apply to the BC Labour Relations Board to direct the employer to provide early disclosure of employee lists and employee contact information during organizing campaigns.
7. Add to the *Code* a provision requiring that all collective agreements entered into after January 1, 2019 must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps, including a process for independent arbitration of any differences.
8. Extend the freeze period provided for the negotiation of a first collective agreement in Section 45(1) of the *Code*.
9. Amend the *Code* to allow access to interest arbitration to settle all labour disputes that extend beyond 180 days.

The Acquisition of Bargaining Rights

1. Amend s. 24 of the Code to bring back card-based certification.

We know that access to union representation and collective bargaining is the most effective measure to improve working conditions, to create greater employment stability and to combat inequality. However, over the last two decades the rate of unionization in British Columbia has fallen from 36% in 1998 to 30% today. It is now below the national average.

Significantly, it was nearly two decades ago when the Code received its last substantive revision, by a newly-elected BC Liberal government in 2001. One of those revisions was the reintroduction of a mandatory vote requirement in all applications for certification. This has undeniably led to a marked reduction in the number of certification applications, and a reduced success rate of certification applications.

As MacTavish and Buchanan so clearly illustrate in their 2016 report *“Restoring Fairness and Balance in Labour Relations,”* that during those periods with a mandatory vote the annual number of workers organized is less than half the level when compared to period with card-based certification procedures.

British Columbia Certification Process and Workers Organized, 1974-2017		
Period	Certification Process	Annual Workers Organized
1974-1983	Card check	7,411
1985-1992	Mandatory vote	4,106
1994-2000	Card check	8,762
2002-2017	Mandatory vote	2,477

Source: J. MacTavish and C. Buchanan, Restoring Fairness and Balance in Labour Relations: The BC Liberals' Attacks on Unions and Workers 2001-2016, BC Federation of Labour, November 2016 (updated with 2016 and 2017 data).

Among the 112 certification applications filed on average each year over the last decade, 37, or fully one-third, were not granted. The rate of successful certification remained largely consistent throughout this period⁵.

This begs the reasonable question: how is it that in one-third of cases where workers have signed sufficient cards to secure a vote, something happens during the voting process to result in a failure to gain a majority for certification? The answer is systematic employer interference with the ability of employees to freely express their wishes about unionization.

The academic literature has demonstrated that management opposition – whether measured by unfair labour practices or by less egregious tactics – is more effective at deterring successful outcomes of certification applications under a mandatory vote procedure than under card-based procedures⁶. Professor Chris Riddell’s study of the impact of unfair labour practices on certification applications in British Columbia lends itself to a number of important findings:

⁵ British Columbia Labour Relations Board, Annual Reports, selected years. Online: <http://www.lrb.bc.ca/reports/>

⁶ Chris Riddell, 2005, “Using Social Science Research Methods to Evaluate the Efficacy of Union Certification Procedures”, 12 Canadian Labour and Employment Law Journal 313 at 505, 509

- The presence of an unfair labour practice allegation correlates with a reduced likelihood of a successful certification by 21 per cent.⁷
- The severity of the unfair labour practice has a role to play in the efficacy of the tactic in reducing successful certification applications:
 - Dismissal tactics are effective, and the more employees that are terminated the more effective the tactic is in reducing a success rate of a certification application.⁸
 - Group coercion including distribution of anti-union memos or newsletters, or anti-union meetings is also a tactic that demonstrably deters successful certifications.⁹
- Specific private sector industries (namely manufacturing, construction, primary resource industries and the hotel/restaurant industry) demonstrate more statistical vulnerability to unfair labour practices.¹⁰
- The smaller the unit, the greater the likelihood that unfair labour practices will deter successful union organizing.¹¹
- The earlier the unfair labour practice is committed, the greater its effect in reducing the chance of a successful certification.¹²

These results are alarming, and indicate that despite the outcome of an unfair labour practice application, employer resistance to organization in the form of unfair labour practices has long-lasting damaging effects which may be beyond the power of a Labour Relations Board to remedy.

In order to significantly diminish the opportunity for unlawful employer interference in union organizing campaigns, and in order to increase access to collective bargaining and the percentage of unionized workers in BC, a return to card-based certification is required.

2. Amend s. 24 of the Code to require that where a vote is necessary to resolve an application for certification, that it is held within 5 working days.

In order to rectify the imbalance of power and limit the effects of an employer's anti-union tactics can have on a successful organizing attempt, the period of employer campaigning following an application for certification must also be eliminated.

The most practical method by which this threat of undue influence could be eliminated is the reintroduction of card-based certification. However, it is crucial that if a mandatory vote requirement is retained, or in other cases where a vote is necessary, the time between the filing of an application for certification and the vote must be shortened considerably. Unifor proposes that this time period be shortened to five working days.

Delay in the processing of applications for certification enables employers to conduct hostile and destructive anti-union campaigns during organizing drives. The number of days it takes the Labour Relations Board to process a certification application has more than tripled, from an average of 28.7 days in the 1993-2000 era to a whopping 94.4 days in the BC Liberal era spanning 2001-2015 (MacTavish and Buchanan, *supra*, at p. 6). This is simply unacceptable. Systemic delay in the processing of

⁷ Chris Riddell, 2001, "Union suppression and certification success", Vol 34(2) Canadian Journal of Economics 396 at 405.

⁸ *Ibid*, at 405, 406.

⁹ *Ibid*.

¹⁰ *Ibid*, at 407.

¹¹ *Ibid*.

¹² *Ibid*, at 408.

applications for certification represents a significant obstacle for workers seeking the benefits of unionization and access to collective bargaining, and these barriers must be eliminated.

3. Extend broader based collective bargaining structures within the private sector, including by enacting mechanisms that would enable unions to bargain with franchisors and multiple franchisees as a single employer.

The decline in unionization in BC has been concentrated in the private sector. The rate of unionization in the private sector two decades ago was already too low at 23%, but it has since fallen by nearly one-third to just 17% today. In comparison, the unionization rate in the public sector has remained relatively stable at close to 80% over this period.

Possibly the most important change to address labour market inequity and to enable large numbers of BC workers the opportunity to enjoy decent work, would be to recommend changes to the *Code* to expand broader based collective bargaining structures.

Broader based bargaining structures are not new and in fact are well established in BC's tradition and current practices. Construction certification and sectoral bargaining are long established norms of labour relations. Public sector bargaining structures in education and health care are also proven mechanisms for providing decent work. The broad based social and political movement to raise wages for Personal Support Workers and Early Childhood Educators are two examples.

Broader based bargaining is absent only from the private sector economy and in particular its precarious sectors. Business strategies and the failure of public policy have allowed this anomaly to become the norm. An examination of Labour Relations Board certification statistics is revealing in terms of sectors of the economy largely shut-out of access to collective bargaining, not only by a weak certification process, but also reflecting the need for policies to support broader-based bargaining in several sectors of the economy.

Consider that among the 1.3 million private sector workers in BC without a union, fully one third (or 445,000), are found in just two sectors: retail and hospitality. A closer look at these two sectors brings focus to some of the many barriers workers in BC face to gaining access to collective bargaining.

Retail is BC's largest source of employment. With 336,000 employees, the retail sector accounts for more than twice the number of jobs as manufacturing (161,000), and is not far from being as large as health care (256,000) and education (150,000) combined. Despite its central role in BC's labour market, just 15% of the retail workforce is unionized, a rate that has remained largely unchanged over two decades despite employment growth of more than a third.

BC's hospitality sector (restaurants, fast food, and hotels), employs 169,000 workers, or 1 of every 12 jobs in the province, and is largely defined by part-time jobs, temporary work and low pay. Despite these conditions, unions have been unable to systematically expand access to collective bargaining in the sector, and today just 6% of workers in hospitality are unionized. Remarkably, the situation has actually worsened. The rate of unionization is half today what it was two decades ago. The lack of good jobs for the next generation is a widely held concern, and for good reason. Just 10% of private sector workers in BC under the age of 25 are unionized.

It is stunning to see that in the hospitality sector over the last five years a total of just five bargaining units were certified by all unions for a combined 269 workers, despite there being 158,000 unorganized workers in the sector. Similarly, LRB statistics show that in the retail sector only five bargaining units were certified over the last five years for a grand total of 158 workers, in a sector that has more than a quarter of a million unorganized workers¹³ ().

That means that just ten bargaining units with a total of 427 workers in retail and hospitality have been certified in the last five years. If this review of the BC Labour Code is looking for evidence of system failure, look no further¹⁴.

It is clear that BC's labour laws have not kept pace with the evolution of the private sector economy, or changes in the nature of work, and it is no coincidence that workers without meaningful access to collective bargaining are highly concentrated in sectors defined by precarious work and low pay.

Unifor's recent contribution to the Changing Workplaces Review¹⁵ process in Ontario included extensive submissions about forms of broader-based bargaining. We proposed novel forms of employee and trade union participation. We proposed that sectoral councils comprised of employers, unrepresented employees and trade unions should have a role in developing sector-specific labour standards tailored to the economic realities of different sectors.

Unifor also proposed measures that would assist employees in precarious employment in franchised and similar businesses by permitting and encouraging broader-based bargaining units. We said this (at p. 105):

“While sectoral standards should reflect a broad community of interest between all workers, unionized and non-union, the institutions of collective bargaining must also adapt to the growing fragmentation of labour markets through the specific application of multi-employer certifications and bargaining rights. These include measures to enable organization and collective bargaining by workers in franchise operations, as well as within the growing workforce of self-employed and single dependent contractors.”

According to Franchise Canada, the franchise industry in Canada generates \$68 billion in revenue on an annual basis. 57% of all franchisors operate at least one location in British Columbia – that's 437 brands and thousands of locations across the province. There is little information available regarding exact numbers of franchise operators in British Columbia¹⁶. It has been Unifor's experience that franchisors protect their franchisee information in order to limit communication between franchise owners. However, we do know that nearly half of all franchises are in the food services industry – which has very low union density in the province and typically involves low-pay and unstable, precarious work.

We therefore also propose an amendment to the *Code* giving the Board express authority to consolidate bargaining units of employees of several franchisees, even where individual ownership may be different, by deeming all of these entities a single or common employer.

¹³ *British Columbia Labour Board, Annual Reports, selected years* <http://www.lrb.bc.ca/reports/>

¹⁴ *Ibid.*

¹⁵ *Unifor, Building Balance, Fairness, and Opportunity in Ontario's Labour Market, Submission by Unifor to the Ontario Changing Workplaces Consultation (September 2015). Link here.*

¹⁶ *Canada Franchise Association, 2017. 2017 Accomplishments Report*

Unfair Labour Practices – Employer Communications

4. Repeal section 8 of the *Code* and restore section 6(1) to the version that predates the Bill 42 amendments.

In 2002, the BC Liberal Government in Bill 42 revised sections 6 and 8 of the *Code* related to unfair labour practice provisions. Those changes greatly expanded the opportunity for employers to influence employees' decisions about union organizing.

After the Bill 42 amendments, section 6(1) contains the same wording as before, but is preceded by, "Except as otherwise provided in Section 8." The revised section 8 reads as follows:

Subject to the regulations, a person has the freedom to express his or her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.

The Labour Relations Board has chosen to interpret s. 8 in a manner that has been greatly detrimental to the ability of employees to exercise rights protected by the *Code*. The revisions in 2002 dramatically shifted the balance of employee freedom of association in favor of employer freedom of expression.¹⁷

Overt opposition by employers to union certification is pervasive in Canada. In a survey of employers across eight Canadian jurisdictions¹⁸:

- 88 per cent of the respondents engaged in actions designed to limit employees' ability to communicate amongst themselves or with union organizers;
- 68 per cent communicated directly with employees regarding certification applications (most often through captive audience speeches); and
- Approximately one-third engaged in forms of employee surveillance and tightening working rules.

More distressingly, of the employer representatives surveyed, 12% admitted to engaging in unfair labour practices during the organizing drive (Not surprisingly, the author raised concerns that the respondents in the sample likely understated their degree of resistance towards certification).¹⁹

Apart from the effect of this period of employer campaigning on the successful rate of applications, further research has demonstrated that employer opposition to certification applications can have deleterious effects on bargaining relationships where union applications eventually succeed. The same author said this:

*If, during the organizing drive, the employer engaged in actions commonly recognized as unfair labour practices, the probability of concluding a collective agreement decreased in the industry model by 14 percentage points, the likelihood of encountering serious bargaining difficulties increased in both models by 30 to 35 percentage points and early decertification increased by an amazing 46 to 57 percentage points, increasing the probability of early decertification from the mean of eight percent to as high as 65 percent.*²⁰

¹⁷ MacTavish and Buchanan, *supra*, at p. 9

¹⁸ Karen Bentham, 2002, "Employer Resistance to Union Certification", Vol. 57(1) *Relations Industrielles/Industrial Relations* 159 at 172, 174.

¹⁹ *Ibid.*

²⁰ *Ibid.*, at 179

Revoking s. 8 of the *Code*, and restoring s. 6(1) to the version that predates the 2002 amendment, is an important and necessary step in restoring the balance between the freedom to associate and the freedom of expression in workplaces across BC. At a minimum, if section 8 is not repealed, it should be returned to the version that existed prior to the Bill 42 amendment.

Successor Rights and Contract Flipping

5. Amend section 35 of the *Code* to deem a sale of business to have occurred for the purposes of s. 35(1) of the *Code*, where an employer that provides services to a client ceases to provide those services, and another employer begins to provide the same services to the client.

This subject might more politely be called “contract retendering” but Unifor prefers to describe it as “contract flipping”. It refers to the practice of providing services by way of contractors that are periodically replaced during retendering processes so that a contractor and its employees are replaced by another contractor and its employees. Sometimes, the same employees can reapply for their employment under new terms and conditions.

In Ontario, the Changing Workplace Review advisors in their [Final Report at p. 410](#) said this about the practice:

We do conclude, however, that in industries mostly populated by vulnerable and largely unskilled workers, the constant re-tendering of contracts is, in many cases, not a mechanism aimed at achieving efficiencies through acquiring greater expertise or different methods of production but, rather, a mechanism to reduce costs by substituting a cheaper, non-union contractor for a unionized one. The social cost and impact of this “efficiency” is borne by those least able to bear it, namely, the vulnerable and the precarious employees in that industry. If a union in collective bargaining negotiates improvements in the working conditions for the unskilled and vulnerable people it represents, these gains are negated by re-tendering. The effect of constant re-tendering is not only to keep compensation low but also to eliminate improvements achieved through collective bargaining.

The practice is of course common in the building services sector (for example, cleaning, security or food services) but also in other areas including warehousing and transportation. Unifor’s experience is that this practice has been corrosive to the quality and security of employment in many sectors of the economy. A result of this practice is that the bargaining rights, and the gains obtained by collective bargaining, are lost when a contractor changes.

Making the successor rights provisions of the *Code* apply in the event of a sale of business apply also where there is a contract retendering would protect the continuity of union bargaining rights and collective agreements. This is now implemented in Ontario for the building services sector (i.e. food, security, cleaning services) but Unifor would favour a broader application of this protection.

Access to Employee Lists and Employee Contact Information

6. Amend the Labour Relations Code to allow trade unions to apply to the BC Labour Relations Board to direct the employer to provide early disclosure of employee lists and employee contact information

The *Code* does not currently provide the ability for unions to access lists of employees in workplaces for organizing. Unions rely on the knowledge of employee organizers to count the number of employees in a given workplace, and to identify and describe the appropriate bargaining unit. This organizing model creates unnecessary obstacles to employee organization that are particularly apparent in larger workplaces or workplaces with multiple locations. Employers have unfettered access to workers at workplaces while union representatives are barred from most workplaces. The exclusion of union representatives has historically been justified on the basis of an employer's property rights. However, such rationalizations entirely ignore workers' *Charter* right to freedom of association. This imbalance in communicative access undermines the ability of workers to effectively exercise their rights because absent information, there can be no informed choice.

To avoid situations where unions are forced to organize without adequate information regarding the proposed bargaining unit, Unifor proposes that the *Labour Relations Code* be amended to allow unions to apply to the Labour Relations Board to seek a direction that an employer must disclose a list of employees in a proposed bargaining unit, subject to a demonstration by the union that it has the support of 20 per cent of the workers in the proposed bargaining unit. That is the threshold enacted in Ontario after the recent Changing Workplaces Review process. In Ontario, section 6.1 of the *Labour Relations Act, 1995* now sets a very low threshold for the appropriateness of a proposed bargaining unit at this stage. The bargaining unit that is the subject of employee list application need only be one that "could be" appropriate for collective bargaining²¹.

No proprietary or privacy objections outweigh the important public policy reasons for supporting this legislative change. The right to choose to belong to, and participate in a union is a right possessed by workers, not employers.

This particular amendment would ensure that unions could provide workers with information, where a threshold level of interest in unionization has been demonstrated. This would not give unions an unfair advantage. Rather, it would give unions a fair opportunity to provide workers with access to information to permit them to make informed decisions about their democratic rights, regardless of whether those decisions are made in support of or in opposition to unionization.

Gender Wage Gap

7. Add a provision to the *Code* mandating that all collective agreements entered into after January 1, 2019, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps, including a process for independent arbitration of any differences.

Despite the progress that has been made, women still face a significant gap in their wages compared to men. A recent report from Vancity Credit Union has put special emphasis on the additional challenges to financial health and well-being women face as a result of the gender wage gap. Their report also found that women in BC face a larger wage gap than women in other provinces. This finding is consistent with data from the Conference Board of Canada²².

²¹ See for example *Grocery Gateway*, [2018 CanLII 7337 \(ON LRB\)](#).

²² Vancity, 2018. *Money Troubled: Inside B.C.'s financial health gender gap*

On average, women in BC are paid less per hour than the national average for women. Women's average annual employment income is 35% less than men in BC (\$34,149 vs. \$52,171). This gap translates into increased stress and a decrease in financial well-being as women have fewer financial resources.

Belonging to a union and setting wages through collective bargaining tends to reduce the gender wage gap, though it doesn't erase it completely. 2017 Statistics Canada data shows the wage gap is significantly reduced for women who are covered by a union. The average hourly wage gap of non-unionized women compared to non-unionized men is 20%. The average hourly wage gap for unionized women vs. unionized men is 8%. On a weekly basis, non-unionized women earn only 70% of what non-unionized men earn while unionized women earn 80% of what unionized men earn²³.

In the absence of any existing legislation focused on eliminating the gender wage gap in BC, the *Code* should be amended to include a provision requiring that all collective agreements entered into after January 1, 2019, must contain a process to identify, evaluate and rectify any systemic gender-based wage gaps, including a process for independent arbitration of any differences.

Collective Bargaining – First Collective Agreements

8. Extend the freeze period provided for the negotiation of a first collective agreement in Section 45 (1) of the Code.

Service of notice to bargain a first collective agreement after certification effectively freezes the existing terms and conditions of employment for only 4 months. This freeze should be extended until the conclusion of the first collective agreement or until the commencement of a lawful strike or lockout.

The time during which the first collective agreement is bargained is the most vulnerable to employer delays and interference. If the working conditions are not frozen until the conclusion of the first agreement, then delay becomes the strategy of some employers in the hopes that the clock will run out and they can use the threat of adverse changes to working conditions to encourage a decertification application. As well, if the employer is able to change terms and conditions of employment without the union's agreement, the effectiveness of the newly certified union is totally undermined.

Strike/ Lockout – Interest Arbitration in Long Disputes

9. Amend the BC Labour Relations Code to allow access to interest arbitration to settle labour disputes that extend beyond 180 days.

Under the *Code*, the BC Labour Relations Board cannot compel parties to resolve their disputes by way of interest arbitration except in the narrow case of a first collective agreement. Even mature bargaining relationships can produce intractable impasses. In order to avoid the financial and human costs of lengthy disputes, Unifor proposes that the *Code* be amended to permit access to interest arbitration to resolve all lengthy disputes.

The introduction of a mechanism to settle long labour disputes is not without precedent in Canada. Section 87.1 of Manitoba's *Labour Relations Act* currently provides a mechanism to have the Manitoba Labour Relations Board settle the provisions of a collective agreement where a dispute has been ongoing for at least 60 days and the parties have worked with a conciliation officer or mediator to settle the

²³Statistics Canada, 2018. *Labour Force Survey CANSIM Table 282-0073*

terms of a collective agreement for at least thirty days²⁴. The *Annual Reports* of the Manitoba Labour Relations Board²⁵ indicate that applications under s. 87.1 are filed infrequently. Thus, the availability of access to interest arbitration after a long dispute does not encourage long disputes in order to access interest arbitration at the end. As well, the Manitoba experience does not suggest that parties are motivated to not negotiate their own collective agreements. It is desirable however, that a remedy be available in the rare cases in which labour disputes continue for a very long time.

Unifor therefore proposes that the *Labour Relations Code*, be amended to include a mechanism to allow a party to apply to settle a collective agreement through interest arbitration where a strike/lockout has been ongoing for at least 180 days.

Conclusion

The recommendations above are for the most part modest ones that are made in the context of the present limited consultation process. These recommendations are important to remedy some of the ways in which BC's labour relations system has been overtaken by changes in the work and changes in business organizations. Unifor looks forward to participating in the community hearings to be held as part of this process.

²⁴ *Labour Relations Act*, CCSM c L10, s. 87.1.

²⁵ Manitoba Labour Relations Board. *Annual Reports*, 2001-2012. Online: <https://www.gov.mb.ca/labour/labbrd/publicat.html>; Only five applications under s. 87.1 were filed in Manitoba from 2001-2012.