File No. 34948

SUPREME COURT OF CANADA

(ON APPEAL FROM A JUDGMENT OF THE ONTARIO COURT OF APPEAL)

BETWEEN:

MOUNTED POLICE ASSOCIATION OF ONTARIO

AND:

B.C. MOUNTED POLICE PROFESSIONAL ASSOCIATION, ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS AND EMPLOYEES OF THE ROYAL CANADIAN MOUNTED POLICE

APPELLANTS

(Respondents / Cross-Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT

(Appellant / Cross-Respondent)

- and -

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CANADIAN POLICE ASSOCIATION, CANADIAN LABOUR CONGRESS, CANADIAN CIVIL
LIBERTIES ASSOCIATION, PUBLIC SERVICE ALLIANCE OF CANADA, AND
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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PART I: OVERVIEW AND STATEMENT OF FACTS

A. Overview

- 1. Section 2(d) of the *Charter* has always protected the freedom of individuals to associate with each other to engage jointly in activities that they are free to pursue individually.
- 2. This Court held for the first time in *Health Services* that section 2(d) can also protect some procedural aspects of labour relations activities. The Court's subsequent decision in *Fraser* provided important guidance as to the limited scope of that protection, and as to its derivative nature. Nevertheless, because of the recency of this development, and the widely disparate perspectives of the majority and the dissent in *Fraser*, uncertainty remains as to the degree to which courts should intervene in government's efforts to design labour relations legislation.
- 3. This appeal represents a significant opportunity for the Court to confirm the essential elements of the legal test to be applied when an individual claimant challenges legislation on the basis of this newly-identified aspect of section 2(d).
- 4. The Attorney General of British Columbia (AGBC) submits that for such claimants to succeed in asserting the derivative right, they must demonstrate, through persuasive evidence, that their employer does not meet with their representatives to engage in meaningful discussions and/or does not listen in good faith to their representations about workplace issues. Most importantly, they must also demonstrate that the challenged legislative provisions are the *cause* of that lack of participation.
- 5. On this appeal, the AGBC says that the Appellants are not entitled to the relief that they seek because, rather than precluding discussions, the legislative provisions have enabled a process which has resulted in good faith discussions between RCMP members and their employer.

6. Furthermore, this Court held in 1999 that the labour relations model governing RCMP members did not infringe the rights of those members under section 2(d), and the developments in the law since that time do not require that that conclusion be re-visited.

B. Statement of Facts

- 7. The AGBC intervenes in this appeal pursuant to the Notice of Constitutional Question served on her on 26 February 2013, and further to the Order granting an extension of time to file a Notice of Intention to Intervene, granted on 9 May 2013.
- 8. For the purposes of her submissions on this appeal, the AGBC adopts and relies on the facts as stated by the Respondent Attorney General of Canada.
- 9. Like the Parliament of Canada, the Legislative Assembly of British Columbia has exempted certain employees in the public service from the operation of the general collective bargaining process available to most provincial public servants pursuant to the *Public Service Labour Relations Act*. The definition of "employee" in s. 1 of that Act lists 34 exemptions, including sheriffs, justices, and practising lawyers.

Public Service Labour Relations Act, R.S.B.C. 1996, c. 388, s. 1 (Appen. pp. 48-53)

10. In addition, the Legislative Assembly has provided for collective bargaining regimes in the health and community social services sectors that differ in significant ways from the model sought by the Appellants in this case. Specifically, bargaining is done between an association of unions and an association of employers. A somewhat similar process is also available in the private sector pursuant to s. 41 of the *Labour Relations Code*, which authorizes a council of unions.

Health Authorities Act, R.S.B.C. 1996, c. 180, Part 3 (Appen. pp. 28-34); Community Services Labour Relations Act, S.B.C. 2003, c. 27 (Appen. pp. 19-23); Labour Relations Code, R.S.B.C. 1996, c. 244, Part 3, Division 5 (Appen. pp. 35-47)

11. Furthermore, the Legislative Assembly has provided that the collective bargaining dispute resolution process applicable to municipal police officers and fire fighters in British Columbia differs from that which would otherwise apply under the *Labour Relations Code*.

Fire and Police Services Collective Bargaining Act, R.S.B.C. 1996, c. 142 (Appen. pp. 24-27)

PART II: POINTS IN ISSUE

- 12. The AGBC takes the following positions with respect to the constitutional questions stated by the Chief Justice on this appeal:
 - a. Does s. 96 of the Royal Canadian Mounted Police Regulations, 1988, SOR/88-361, infringe s. 2(d) of the Canadian Charter of Rights and Freedoms? **No.**
 - b. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms?* No position.
 - c. Does paragraph (d) of the definition of "employee" at s. 2(1)(d) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, infringe s. 2(d) of the *Canadian Charter of Rights and Freedoms*? **No.**
 - d. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms?* No position.

PART III: ARGUMENT

13. In addition to directly protecting individuals' freedom to associate, section 2(d) of the *Charter* also protects a limited right to a *process* of engagement with employers in the context of labour relations, but this right is derivative of the individual's freedom to associate that has always been expressly protected by that section.

Health Services affirms a derivative right to collective bargaining, understood in the sense of a process that allows employees to make representations and have them considered in good faith by employers, who in turn must engage in a process of meaningful discussion.

Fraser v. Ontario (Attorney General), 2011 SCC 20 at para. 54 per McLachlin C.J.C., LeBel J. (Appellants' Authorities ("AA"), Vol. 1, Tab 10)
See also Health Services & Support-Facilities Subsector Bargaining Assn. v. British
Columbia, 2007 SCC 27 at para. 19 per McLachlin C.J.C., LeBel J. (AA, Vol. 2, Tab 11)

- 14. Because the right is derivative, it cannot guarantee any *particular* process, nor can it guarantee any particular *model* of labour relations.
 - ... First, as discussed, the majority in *Health Services* unequivocally stated that s. 2(d) does not guarantee a particular model of collective bargaining or a particular outcome (para. 91).

Second, and more fundamentally, the logic of *Dunmore* and *Health Services* is at odds with the view that s. 2(d) protects a particular kind of collective bargaining. As discussed earlier, what s. 2(d) protects is the right to associate to achieve collective goals. Laws or government action that make it impossible to achieve collective goals have the effect of limiting freedom of association, by making it pointless. It is in this derivative sense that s. 2(d) protects a right to collective bargaining: see *Criminal Lawyers'* Assn. v. Ontario (Ministry of Public Safety & Security), 2010 SCC 23, [2010] 1 S.C.R. 815 (S.C.C.) ("CLA"), where the right to access government information was held to be "a derivative right which may arise where it is a necessary precondition of meaningful expression on the functioning of government" (para. 30). However, no particular type of bargaining is protected. In every case, the question is whether the impugned law or state action has the effect of making it impossible to act collectively to achieve workplace goals. [emphasis added]

- 15. The reason for this flows from the very nature of the derivative right. In a case like *Dunmore*, the claim is that the claimants are prevented from associating *at all* to address workplace issues; once that claim has been established on the evidence, proof of the infringement is complete. In a derivative rights case, however, the claimant must establish, on the evidence, not only that there has been no process of engagement with their employers, but also that the lack of process is necessarily attributable to the impugned legislation. So long as the process established by the legislation does not render it impossible for the claimants to associate to discuss workplace issues, no infringement of s. 2(d) has been made out.
- 16. Logically, therefore, the derivative right to a process of engagement described in *Fraser* guarantees only that employees will not be entirely denied a meaningful process of engagement with their employers. It *cannot* guarantee that the engagement will occur through any particular process.

A. Protection of Process, Not Substance

17. The right within s. 2(d) protects a right to "a process that allows employees to make representations and have them considered in good faith by employers, who in turn must engage in a process of meaningful discussion".

18. This right to a process must be interpreted and applied with care. If it is not, it can all too easily amount, in effect, to a grant of constitutional protection to a particular model or process or even specific terms of collective agreements. This would introduce undesirable rigidity into the constitutional requirements of the design of collective bargaining procedures. As this Court unanimously observed in 2002:

Judging the appropriate balance between employers and unions is a delicate and essentially political matter. Where the balance is struck may vary with the labour

climates from region to region. This is the sort of question better dealt with by legislatures than courts. Labour relations is a complex and changing field, and courts should be reluctant to put forward simplistic dictums.

Pepsi-Cola Canada Beverages (West) Ltd. v. R.W.D.S.U., Local 558, 2002 SCC 8 at para. 85 (AGBC Auth., Vol. 1, Tab 5, at p. 80)

- 19. Courts must be cautious not to conflate the *process* of collective bargaining with the *bargains reached*, transforming collective agreements into constitutional documents. Process and substance must be kept distinct.
- 20. The AGBC says that this appeal presents an opportunity for this Court to provide clear guidance on the scope of the derivative right within freedom of association. In particular, this Court can and should confirm that the constitutional protection attached to collective bargaining is an entitlement to the existence of *any* process that does not preclude meaningful discussions between employees and their employer, and can never amount to protection of a particular model or a particular clause in an agreement, or to a right to any specific mechanism to reach an agreement.
- 21. This was the approach followed, for example, by the Federal Court of Appeal earlier this year:

I begin by observing that legislation that significantly interferes with, or nullifies, existing collectively bargained terms of employment will not necessarily violate section 2(d): *B.C. Health Services* at paragraphs 92 and 96. As explained by the majority in *Fraser* at paragraph 76, the majority of the Court in *B.C. Health Services* did not find that a breach of a term of a collective agreement *per se* violated section 2(d) of the *Charter*. Rather, it was the unilateral nullification of significant contractual terms, coupled with the effective denial of future collective bargaining, which violated the section 2(d) right to associate.

It follows from this that, in order to demonstrate a breach of their section 2(d) right of association, it is insufficient for the respondents to simply establish the nullification of previously announced pay increases. The respondents are required to prove that the ERA rendered it substantially impossible for RCMP members to exercise their freedom of association.

Royal Canadian Mounted Police v. Canada (Attorney General), 2013 FCA 112 at paras. 86-87 ("RCMP"). (Respondent's Authorities, Tab 1)
See also Federal Government Dockyard Trades and Labour Council v. Canada (Attorney General), 2013 BCCA 371 at paras. 36-54 (AGBC Auth., Vol. 1, Tab 3, at pp. 46-53), SFL v. Saskatchewan, 2013 SKCA 43 at paras. 102-121 (AGBC Auth., Vol. 1, Tab 6, at pp. 96-102); Assn. of Justice Counsel v. Canada (Attorney General), 2012 ONCA 530 at paras. 33-42 (AGBC Auth., Vol. 1, Tab 1, at pp. 4-5); and Independent Electricity Market Operator v. C.U.S.W., 2012 ONCA 293 at paras. 55-65 (AGBC Auth., Vol. 1, Tab 4, at pp. 62-64).

B. The Importance of the Factual Context

22. The availability of relief will depend, in every case, on the factual context. In *Dunmore*, for example, the effect of the total exclusion of agricultural workers from the Ontario *Labour Relations* Act was to render them "substantially unable to organize" because as a group the workers were "poorly paid, face difficult working conditions, have low levels of skill and education, low status and limited employment mobility," and as such the court found they were a vulnerable group needing statutory protection.

Fraser, supra, at para. 5; Dunmore v. Ontario (Attorney General), 2001 SCC 94, at para. 41 (AA, Vol. 1, Tab 8).

23. In *Fraser*, the same category of workers had been provided with procedural protection for their organizing activities that was quite different from, and was still alleged to be inferior to, the protection available to the vast majority of workers covered by the *Labour Relations Act*. This Court nevertheless upheld the legislation even though the evidence suggested that employers had not been dealing with employees in good faith:

The evidence shows that the respondents attempted to engage employers in collective bargaining activities on a few occasions. On each occasion the employer ignored or rebuffed further engagement. The employers have refused to recognize their association and have either refused to meet and bargain with it or have not responded to the demands of the respondents.

Fraser, supra, at para. 108. (AA, Vol. 1, Tab 10)

- 24. The claim failed because the *legislation* (properly interpreted) had not made it impossible for the workers to associate and bring workplace concerns to their employer. The Court did read into the legislation a requirement that the employers deal with the workers' representations in good faith but did not strike down the legislation.
- 25. Since *Fraser*, several appellate courts have applied the decision in a manner consistent with the AGBC's proposed approach (set out below). In *Assn. of Justice Counsel*, the claimant union had engaged in collective bargaining with the employer, the government of Canada. After negotiations broke down, the union invoked the arbitration process provided for under the PSLRA. Before the arbitration process got under way, Parliament enacted the *Expenditure Restraint Act* ("ERA"), which prohibited any wage increase in excess of the government's final offer. The union challenged the ERA as an infringement of its members' rights under s. 2(d), but the Ontario Court of Appeal dismissed that claim. The Court of Appeal held that the employees had had the opportunity to engage in a meaningful process of collective bargaining, and that that was all that s. 2(d) protects:

Fraser makes clear that s. 2(d) has limits: it does not guarantee any dispute resolution process after the parties have reached an impasse and it does not guarantee any particular outcome. In my view, the validity of the ERA must be assessed on the basis of whether, at the time it was enacted, the parties had had the opportunity for a meaningful process of collective bargaining. If they had, s. 2(d) is satisfied. The faint hope of further negotiations in the shadow of a dispute resolution mechanism not protected by s. 2(d) cannot expand or extend the reach of s. 2(d) beyond its core guarantee.

I conclude, accordingly, that the AJC has failed to demonstrate that the ERA infringed the rights of its members to engage in a meaningful process of collective bargaining and that the claim under s. 2(d) must fail.

Assn. of Justice Counsel, supra, at paras. 41-42 (AGBC Auth., Vol. 1, Tab 1, at p. 5)

26. In RCMP, the Federal Court of Appeal addressed a claim by members of the RCMP that the same legislation (the ERA) had infringed their s. 2(d) rights. The Court of Appeal dismissed the claim, holding that "the ERA did not substantially interfere with the process by which members of the RCMP pursue their associational activity because the

ERA did not make it impossible for members of the RCMP to act collectively to achieve workplace goals".

Royal Canadian Mounted Police, supra, at para. 90 (Respondent's Authorities, Tab 1).

27. In Federal Government Dockyard Trades and Labour Council, the claimant unions also challenged the ERA on the basis that it had infringed its members' rights under s. 2(d). The British Columbia Court of Appeal dismissed the claim, relying in part on the decisions in RCMP and Assn. of Justice Counsel.

Federal Government Dockyard Trades and Labour Council, supra, at paras. 36-54 (AGBC Auth., Vol. 1, Tab 3, at pp. 46-53)

28. Finally, in *SFL*, the claimant unions sought to strike down, *inter alia*, provisions in the *Trade Union Amendment Act* that had the effect of making it more difficult for trade unions to be certified. The Saskatchewan Court of Appeal dismissed the claim, finding that although the provisions in question certainly did make certification of unions more difficult, the relevant question was whether they infringed the fundamental freedom guaranteed by s. 2(d), and they did not.

SFL, supra, at paras. 102-108 [AGBC Auth., Vol. 1, Tab 6, at pp. 96-102]

C. The Necessary Analytical Structure

- 29. To clarify the law and dispel confusion, the AGBC submits this court should set out a concise analytical test for claims brought under s. 2(d) in the labour relations context. The AGBC says the following analytical structure provides this clarity and encapsulates all of the preceding principles:
 - (a) If a claimant can demonstrate that it is impossible for employees to associate with each other for the purpose of discussing workplace concerns, the claimant may be entitled to relief under s. 2(d) on the basis of a *direct* infringement

of their freedom of association. The claim may or may not be a "positive" claim based on under-inclusion depending upon the circumstances (*Dunmore*).

- (b) If it is not impossible for employees to associate, the only possible claim is the derivative one described in *Fraser*. If such a claim is made, the court must ask:
 - (i) does the employer either not meet with employee representatives about workplace issues, or not listen in good faith to the employee representations?
 - (ii) if either of those circumstances is made out on the evidence, is it a necessary result of the legislation (bearing in mind that, if possible, the legislation will be read so as to imply a duty of good faith on the part of the employer: Fraser)?
 - (iii) only if the employer refuses to meet with employee representatives, or meets and refuses to listen in good faith, *and* that refusal is the necessary result of the impugned legislation (as, for example, where it is simply not possible to read into the legislation a good faith requirement), will the employees have a remedy against the legislation under s. 2(d). In all other cases, their remedy if any is against the employer.

D. Application to this Appeal

- 30. Applying this analytical structure to this appeal the first question becomes: does the employer meet with representatives of RCMP members and does it listen in good faith to the representatives?
- 31. If the answer to both of those questions is "yes" as it must be, in light of the findings of fact described below then the appeal ought to be dismissed, as no

infringement of RCMP members' freedom of association under s. 2(d) has been made out on the evidence.

- 32. The following facts, relied on by the Court of Appeal, support the conclusion that neither s. 96, nor the definition of "employee," render association by RCMP members in pursuit of workplace goals impossible:
 - (a) RCMP members actually have formed the two appellant associations (among others) in order to pursue workplace goals;
 - (b) this Court has already held (in *Delisle*, as confirmed in *Dunmore*, *Health Services*, and *Fraser*) that RCMP members *do not* face barriers that make them substantially incapable of exercising their right to form associations outside the statutory framework;
 - (c) the SRRP exists, and allows RCMP members to act collectively to pursue workplace issues in a meaningful way; and
 - (d) RCMP members have associated in the Legal Fund, which was established to assist members with employment-related issues.
- 33. As the Court of Appeal noted, the applications judge made a finding of fact, which has not been challenged by the Appellants, that extensive good faith discussions *do* in fact occur between RCMP management and SRRs representing RCMP members:

The application judge found that there was extensive collaboration between SRRs and management that was carried out in good faith by everyone involved. He accepted, at para. 68, that "RCMP management listens carefully and with an open mind to the views of SRRs in the consultative process established by the SRRP." There is no reason to interfere with that finding.

Court of Appeal Reasons at para. 130. (Appeal Record, Vol. 1, Tab 16, p. 115)

- 34. In the face of that finding of fact, and in the absence of evidence that it is *impossible* for RCMP members to collectively make representations to their employer, or that it is *impossible* to have those representations considered in good faith by an employer who engages in a process of meaningful discussion, the s. 2(d) rights of those members have not been infringed.
- 35. Even if the evidence were to demonstrate that as a matter of *fact* RCMP management had not considered SRR representations in good faith, that would not give rise to a constitutional remedy as against the legislation, because the statutory framework must as in *Fraser* be read as implying a duty of good faith. A lack of good faith on the part of the employer would therefore not be as a necessary result of the *legislation*. As this Court noted in *Delisle*, the members may have recourse against the *employer* as a result of its failure to comply with the implied good faith requirement, but the legislation would be constitutionally valid.

Delisle v. Canada (Attorney General), [1999] 2 S.C.R. 989 at paras. 10, 32. (AA, Vol. 1, Tab 7)

E. Problems with the Appellants' Approach

- 36. Rather than asking the questions set out above, the Appellants fault the legislative scheme because it does not provide for an association of *their* choosing and initiative, and because it is separate from the PSLRA labour relations regime. They go on to argue that Parliament must be required to offer RCMP members a particular platform for their representations, and a particular statutory scheme (the PSLRA) to govern their interactions.
- 37. Such a claim is not a claim for procedural rights that s. 2(d) protects, nor can it be a claim for the fundamental freedom to associate. Instead, it is a claim that the appellant organizations are entitled to statutory recognition and access to a specific statutory model

of labour relations. This is analogous to the claim for a positive right under s. 2(b) that was dismissed in *Baier*:

To determine whether a right claimed is a positive right, the question is whether the appellants claim the government must legislate or otherwise act to support or enable an expressive activity. Making the case for a negative right would require the appellants to seek freedom from government legislation or action suppressing an expressive activity in which people would otherwise be free to engage, without any need for any government support or enablement.

The appellants in this case make a claim for the government to legislate to enable expressive activity. Their claim is thus a positive one.

Baier v. Alberta, 2007 SCC 31 at paras. 35-36 (AGBC Auth., Vol. 1, Tab 2, at p. 32)

38. It is also important to note that s. 2(d) guarantees the freedom of *individuals* to associate. In the words of Chief Justice Winkler, "freedom of association, as guaranteed by s. 2(d), is enjoyed by individuals, not by unions".

Independent Electricity Market Operator, supra, at para. 56 (AGBC Auth., Vol. 1, Tab 4, at p. 62)

39. As such, the appellant associations cannot succeed by demonstrating that *they* have been denied the opportunity to make representations to RCMP management. Only by demonstrating that individual RCMP members *as a whole* have been denied that opportunity could this claim succeed.

F. Delisle

40. This Court held in 1999 that the labour relations model governing members of the RCMP did not infringe the rights of those members under s. 2(d). The conclusion reached at that time is readily reconciled with the more recent authorities from this Court. As a result there is no reason to re-visit that conclusion, and it should be affirmed.

Delisle, supra. (AA, Vol. 1, Tab 7)

41. In *Dunmore*, Bastarache J. carefully differentiated the situation of the RCMP members considered in *Delisle* from the parameters of s. 2(d) protection he was then considering. He noted that the situation of the agricultural workers was qualitatively different from that of RCMP members, who were more akin to members of the armed forces, senior executives in the public service, and judges. He particularly relied on the facts established by the evidence in *Delisle* that RCMP members, unlike agricultural workers, were able to organize without statutory protection as a result of their relative status and financial resources.

Dunmore, supra, at paras. 14, 25, 39, 41, 45. (AA, Vol. 1, Tab 8)

42. The continuing relevance of the line drawn in *Dunmore* between that case and *Delisle* was made abundantly clear by McLachlin C.J.C. and LeBel J. in *Fraser*:

The decision in *Health Services* follows directly from the principles enunciated in *Dunmore*. Section 2(*d*), interpreted purposively and in light of Canada's values and commitments, protects associational collective activity in furtherance of workplace goals. ...

The resolution of this appeal does not rest on stark reliance on a particular conception of collective bargaining. Rather, it requires us to return to the principles that underlie the majority rulings in *Dunmore* and *Health Services*. The question here, as it was in those cases, is whether the legislative scheme (the *AEPA*) renders association in pursuit of workplace goals impossible, thereby substantially impairing the exercise of the s. 2(*d*) associational right. ...

Fraser, supra, at paras. 38, 48; see also paras. 55, 61-62. (AA, Vol. 1, Tab 10). See also Health Services, supra, at paras. 35, 90. (AA, Vol. 2, Tab 11)

43. Thus, the Court of Appeal was correct to hold, as it did, that this Court's decision in *Delisle* is determinative of the issues in this case.

Court of Appeal Reasons at para. 127. (AR, Vol. 1, Tab 16, p. 115)

PART IV: COSTS

44. The AGBC seeks no costs, and asks that no costs be awarded against her.

PART V: ORDER SOUGHT

45. The AGBC submits that questions (a) and (c) should be answered "No," and that the appeal should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of August, 2013.

Jonathan Penner, Counsel for the Intervener Attorney General of British Columbia

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PART VI - TABLE OF AUTHORITIES

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Public Service Labour Relations Act, R.S.B.C. 1996, c. 388, s. 1	9

Community Services Labour Relations Act [SBC 2003] CHAPTER 27

Assented to May 29, 2003

Contents

- 1 Definitions and interpretation
- 2 CSSEA as bargaining agent
- 3 Bargaining units of agency employees
- 4 Association of unions
- 5 Vote for one union
- 6 Volunteers and family home providers
- 7 Labour relations matters
- 8 Application of the Code
- 9 Spent
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Definitions and interpretation

1 (1) In this Act:

"agency" means an organization or a person that enters into a contract with the government to provide community social services, but does not include the authority;

"association of unions" means an association of trade unions established under section 4;

"authority" means Community Living British Columbia established under the Community Living Authority Act;

"Code" means the Labour Relations Code;

"CSSEA" means the Community Social Services Employers' Association established under section 6 of the *Public Sector Employers* Act;

"family home provider" means a person who,

- (a) in a residence owned or rented and occupied by a person, is the primary care provider to that person, and
- (b) as a care provider, does not provide care to more than 3 persons at any time.
- (2) To the extent that this Act does not otherwise define a word or an expression used in this Act, the definitions in the Code apply.

CSSEA as bargaining agent

- 2 (1) CSSEA is deemed to be the accredited bargaining agent for
- (a) agencies that are members of CSSEA, and
- (b) the authority

whose employees are represented by a trade union.

(2) CSSEA has exclusive authority to bargain collectively on behalf of agencies and the authority referred to in subsection (1) and to bind them by a collective agreement.

Bargaining units of agency employees

- 3 (1) For the purpose of collective bargaining between CSSEA and the association of unions representing employees of agencies, a separate bargaining unit is established for each of the following:
- (a) agencies that are members of CSSEA and contract primarily to provide community living services;
- (b) agencies that are members of CSSEA and contract primarily to provide services to aboriginal persons;
- (c) agencies that contract primarily to provide services other than those described in paragraphs (a) and (b);
- (d) the authority.
- (2) For the purpose of collective bargaining between CSSEA and the association of unions representing employees of agencies, the Lieutenant Governor in Council may establish a separate bargaining unit representing all unionized employees of agencies that are members of CSSEA.

Association of unions

- 4 (1) A trade union certified to represent the employees of an agency included in a bargaining unit established under section 3 must belong to a single association of unions composed of all trade unions representing employees in all bargaining units established under section 3.
- (2) The trade unions affected by subsection (1) must agree, within 30 days of the date on which this section comes into force, to articles of association that
- (a) are consistent with this Act and the Code,

- (b) provide the association of unions with exclusive jurisdiction to bargain on behalf of the bargaining units for which the association of unions will be certified and to conclude a single collective agreement for each bargaining unit established under section 3,
- (c) provide the association of unions with the right and obligation to resolve differences among its members with respect to the administration of the collective agreements referred to in paragraph (b) of this subsection, including differences with respect to the right or obligation to a particular trade union within the association of unions,
- (d) include provisions with respect to ratification and other collective bargaining processes that reflect the relative membership size of trade union representation in the bargaining units within the association of unions, while ensuring that a member or group of members of a constituent trade union is not treated by the association of unions in bad faith or in a manner that is arbitrary or discriminatory,
- (e) provide for the future addition to the association of unions of any other trade unions that the Labour Relations Board may certify to represent employees of an agency that are within a bargaining unit, and
- (f) include any other provision that the Labour Relations Board determines may be necessary in order to ensure that the association of unions can function as a bargaining agent and administer a collective agreement on behalf of the employees within its jurisdiction.
- (3) The articles of association referred to in subsection (2) are subject to approval by the Labour Relations Board.
- (4) If the articles of association referred to in subsection (2) are not agreed to by the trade unions and approved by the Labour Relations Board before the expiry of the time period established under subsection (2), the Labour Relations Board must determine the articles of association within 30 days of the end of that time period.
- (5) Articles of association determined under subsection (4) are deemed to be a decision of the Labour Relations Board.

Vote for one union

- 5 (1) Despite section 4, if the minister determines that
- (a) the delivery of community social services generally, or the flexibility of delivery, would be improved,
- (b) the cost effectiveness of service delivery in the community social services sector would be better served, or
- (c) the public interest would be better served

if there were only one union representing employees in the bargaining units established under section 3, the minister may direct the Labour Relations Board to conduct a vote to determine which union will represent all of the employees in the respective bargaining units.

(2) If the minister issues a directive under subsection (1), the Labour Relations Board must conduct the vote within 45 days of receipt of the directive.

Volunteers and family home providers

- 6 A collective agreement must not contain any provision that directly or indirectly
- (a) prevents an agency or the authority from using volunteers, if the use of volunteers does not result in the layoff of an employee, or
- (b) limits the government, an agency or the authority from entering into a contract with a family home provider.

Labour relations matters

- 7 (1) A collective agreement to which the government or the authority is a party does not bind, and section 35 of the Code does not apply to, an agency that contracts with the government or the authority.
- (2) An arbitrator or the Labour Relations Board must not declare a person who
- (a) provides services under a contract between the government and an agency or between the authority and an agency, or
- (b) is an employee of an agency

to be an employee of the government or of the authority unless the government or the authority intended that person to be fully integrated into the operations of, and working under the direct supervision or control of, the government or the authority.

- (3) The *Health and Social Services Delivery Improvement Act* applies to an agency whose employees are represented by a trade union whether or not that agency is a member of CSSEA.
- (4) The minister may withhold or reduce
- (a) a grant, other than a debt service grant,
- (b) an amount payable to an agency under a contract with the government or the authority, or
- (c) an amount payable to the authority under a contract with the government

if the operating expenses of an agency or the authority, as the case may be, have been reduced during a strike or lockout as defined in the Code.

(5) The minister may direct an audit of an agency or the authority to determine the amount of the reduction in operating expenses as a result of a strike or lockout.

Application of the Code

- 8 (1) The Code and the regulations made under it apply to the government, an agency and the authority, but, if there is a conflict or inconsistency between this Act and those enactments, this Act applies.
- (2) Except as specifically provided in this Act, the Labour Relations Board has exclusive jurisdiction to decide a question arising under this Act.

Spent

9 [Consequential amendment. Spent. 2003-27-9.]

Commencement

10 This Act comes into force by regulation of the Lieutenant Governor in Council.

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Fire and Police Services Collective Bargaining Act [RSBC 1996] CHAPTER 142

Contents

- 1 Definitions
- 2 Application of Labour Relations Code
- 3 Settlement of dispute by arbitration
- 4 Settlement by arbitration
- 5 Referral of questions to the Labour Relations Board

Definitions

1 In this Act:

"arbitration bureau" means the Collective Agreement Arbitration Bureau continued under the Code;

"board" has the same meaning as in the Code;

"Code" means the Labour Relations Code;

"employer" means an employer of one or more members of a fire fighters' union or police officers' union;

"fire fighters' union" means a trade union certified for a unit in which the majority of employees has as its principal duties the fighting of fires and the carrying out of rescue operations;

"parties" means a fire fighters' union or police officers' union and an employer with which it bargains collectively;

"police officers' union" means a trade union certified for a unit in which the majority of employees is engaged in police duties.

Application of Labour Relations Code

2 The Code and the regulations under it apply in respect of the matters to which this Act applies, but if there is a conflict or inconsistency between this Act and the Code, this Act applies.

Settlement of dispute by arbitration

3 (1) If a fire fighters' union or a police officers' union and an employer have bargained collectively and have failed to conclude a collective agreement or a renewal or revision of a collective agreement, the trade union or the employer may apply to the minister for a direction that the dispute be resolved by arbitration.

- (2) The minister may direct that the dispute be resolved by arbitration if
- (a) a mediation officer has been appointed under section 74 of the Code and has conferred with the parties, and
- (b) the associate chair of the mediation division of the board has made a report to the minister
- (i) setting out the matters on which the parties have and have not agreed,
- (ii) stating whether in the opinion of the associate chair the party seeking arbitration has made every reasonable effort to reach a collective agreement, and
- (iii) stating whether in the opinion of the associate chair the dispute or some elements of the dispute should be resolved by applying the dispute resolution method known as final offer selection.
- (3) The minister may specify terms of reference for an arbitration under this Act.
- (4) If the minister directs that the dispute be resolved by arbitration, a trade union must not declare or authorize a strike and an employer must not declare or cause a lockout, and if a strike or lockout has begun the parties must immediately terminate the strike or lockout.

Settlement by arbitration

- 4 (1) If the minister directs that a dispute be resolved by arbitration, the parties may, by agreement, make arrangements for the appointment of a single arbitrator or the establishment of a 3 person arbitration board.
- (2) If the parties have failed to agree to a single arbitrator or an arbitration board is not fully constituted within 10 days after the minister makes a direction under subsection (1), the director of the arbitration bureau must appoint a single arbitrator to hear the dispute.
- (3) The arbitrator or arbitration board appointed or established under this section must commence the hearing within 28 days of being appointed or established and must issue a decision within 21 days of the conclusion of the hearing.
- (4) Sections 92 to 98, 101 and 102 of the Code apply to an arbitration under this Act.
- (5) The arbitrator or arbitration board may encourage settlement of the dispute and, with the agreement of the parties, may use mediation or other procedures to encourage settlement at any time during the arbitral proceedings.
- (6) In rendering a decision under this Act, the arbitrator or arbitration board must have regard to the following:

- (a) terms and conditions of employment for employees doing similar work;
- (b) the need to maintain internal consistency and equity amongst employees;
- (c) terms and conditions of employment for other groups of employees who are employed by the employer;
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
- (e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community;
- (f) any terms of reference specified by the minister under section 3;
- (g) any other factor that the arbitrator or arbitration board considers relevant.
- (7) Each party to an arbitration under this Act is responsible for
- (a) its own fees, expenses and costs,
- (b) the fees and expenses of a member of an arbitration board that is appointed by or on behalf of that party, and
- (c) an equal portion of the fees and expenses of the chair of the arbitration board or a single arbitrator.

Referral of questions to the Labour Relations Board

- 5 (1) A question
- (a) as to whether or not this Act has been complied with, or
- (b) respecting the interpretation or application of this Act, or an order made under this Act may be referred to the board by a party or another interested person.
- (2) The board has jurisdiction to decide a question referred to it under subsection (1) and may, by order, enforce the decision
- (a) in the manner, and
- (b) by applying the remedies

available under the Code for the enforcement of a decision or order of the board.

Health Authorities Act [RSBC 1996] CHAPTER 180

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Part 3 — Health Sector Labour Relations

Definitions

19.1 In this Part:

"appropriate bargaining unit" means a bargaining unit referred to in section 19.4 or as determined by the labour relations board under section 19.5;

"certification" means a certification issued by the labour relations board to a trade union that is certified as a bargaining agent to represent employees in the health sector;

"Code" means the Labour Relations Code;

"community subsector" includes adult day care, child development centres, community service agencies, drug and alcohol services, mental health services, regional and community administration and any other services that are not included in the facilities subsector;

"effective date" means the date this Part comes into force;

"facilities subsector" means acute, extended and long term care facilities and diagnostic and treatment centres and includes the Cumberland Regional Hospital Laundry Society (Cumberland Laundry), the Arthritis Society and the Arthritis Society (Victoria Division), the British Columbia Cancer Agency (British Columbia Cancer Agency, Victoria Cancer Clinic) and the Canadian Blood Services;

"HEABC" means the Health Employers Association of British Columbia;

"health sector" means all members of HEABC whose employees are unionized and includes their unionized employees, and consists of the community subsector and the facilities subsector;

"labour relations board" means the Labour Relations Board established under the Code;

"nurse" means a person who is authorized under the *Health Professions Act* to practise in British Columbia as a registered nurse, licensed practical nurse or registered psychiatric nurse and who works in a job for which that authorization is a requirement of the employer or a prerequisite to performing the job as required by statute, regulation or program accreditation;

"Regulation" means the Health Sector Labour Relations Regulation, B.C. Reg. 329/95;

"resident" means a person who is taking post graduate training in medicine and is registered with the College of Physicians and Surgeons of British Columbia on the register or the temporary register.

Exclusion of nurse practitioners

19.11 A registered nurse who

- (a) works in a job for which authorization under an enactment to practise in British Columbia as a nurse practitioner is a requirement, and
- (b) performs or provides services as part of the job described in paragraph (a) for which the authorization described in that paragraph is required at law for a registered nurse to perform or provide the services

is excluded from the bargaining unit described in section 19.4 (1) (b).

Application of Labour Relations Code

- 19.2 (1) The Code and the regulations under it apply in respect of matters to which this Part applies, but where there is an inconsistency between this Part and the Code, this Part applies.
- (2) Except as specifically provided in this Part, the labour relations board has exclusive jurisdiction to determine a matter arising under this Part.

Health Sector Labour Relations Regulation repealed

- **19.3** (1) The Regulation is repealed.
- (2) Subject to this Part, the reorganization, integration and reassignment of employees and units required by the Regulation and completed before the effective date continue to apply.

Appropriate bargaining units

- **19.4** (1) Subject to section 19.5, the following are the appropriate bargaining units in the health sector:
- (a) residents;
- (b) nurses;
- (c) paramedical professionals;
- (d) health services and support facilities subsector;

- (e) health services and support communities subsector.
- (2) Appropriate bargaining units may be multi-employer units.
- (3) All unionized employees in the health sector must be included in an appropriate bargaining unit.

Review of appropriate bargaining units

- 19.5 The minister charged with administration of the Code, on application or on the minister's own motion, and after the investigation considered necessary or advisable, may direct the labour relations board to
- (a) add a bargaining unit as an appropriate bargaining unit, or
- (b) consolidate 2 or more appropriate bargaining units.

Review of certifications

- 19.6 (1) The labour relations board may on application or must on direction by the minister charged with the administration of the Code, after the investigation considered necessary or advisable, consider whether continuation of a certification issued to a trade union is appropriate.
- (2) If, acting under subsection (1), the labour relations board determines that the continuation of a certification is inappropriate, the labour relations board must cancel that certification.
- (3) If a certification has been cancelled under subsection (2), the labour relations board must determine which trade union will represent the employees and may hold a representation vote for that purpose.
- (4) When there is a change in trade union representation under this section, the labour relations board has the power necessary to address the consequences of the change for employees.
- (5) In making a determination under subsection (2), the labour relations board must cancel a certification if the cancellation will
- (a) improve industrial stability,
- (b) enhance operational efficiency of health sector employers,
- (c) enhance a health sector employer's ability to restructure or reorganize its services or functions, or
- (d) enhance a health sector employer's ability to integrate services or functions.

- (e) [Repealed RS1996-180-19.6 (6).]
- (6) [Spent. RS1996-180-19.6 (6).]

Repealed

19.7-19.8 [Repealed 2002-2-24.]

Associations of bargaining agents

- 19.9 (1) A trade union certified as bargaining agent for employees in an appropriate bargaining unit must belong to an association composed of all the trade unions with certifications for appropriate bargaining units of the same description.
- (2) On a date determined by the labour relations board, but no later than 6 months after the effective date,
- (a) associations of bargaining agents formed under section 13 of the Regulation cease to operate, and
- (b) new associations of bargaining agents must be formed in relation to the bargaining units referred to in section 19.4 (1) (a) to (c) in accordance with this section.
- (3) Before the date determined by the labour relations board under subsection (2), the trade unions in each association referred to in subsection (2) (b) must agree to articles of association that
- (a) are consistent with this Act and the Code,
- (b) provide the association with the exclusive jurisdiction to bargain on behalf of the bargaining units for which the association will be certified and to conclude a single collective agreement with respect to those units,
- (c) provide the association with the right and obligation to resolve differences among its members with respect to the administration of the collective agreement referred to in paragraph (b), including differences with respect to the right or obligation to belong to a particular trade union within the association,
- (d) include provisions with respect to ratification and other collective bargaining processes that reflect the relative membership size of trade union representation in the bargaining units within the association, while ensuring that no member or group of members of a constituent trade union is treated in a manner that is arbitrary, discriminatory or in bad faith by the association,
- (e) provide for the future addition into the association of any other trade unions that the labour relations board may certify to represent an appropriate bargaining unit, and

- (f) include any other provisions that the labour relations board determines may be necessary in order to ensure that the association can function as a bargaining agent and administer the collective agreement on behalf of the employees within its jurisdiction.
- (4) The articles of association referred to in subsection (3) are subject to approval by the labour relations board.
- (5) If the articles of association referred to in subsection (3) are not agreed to by the trade unions and approved by the labour relations board before the date established by the labour relations board under subsection (2), the labour relations board must determine the articles of association.
- (5.1) On a date determined by the labour relations board, but no later than 6 months after the date on which this subsection comes into force, a new association of bargaining agents must be formed in relation to the bargaining unit referred to in section 19.4 (1) (d).
- (5.2) Subsections (3), (4) and (5) apply to the association referred to in subsection (5.1) and to the trade unions certified as bargaining agents for any of the employees in the bargaining unit referred to in section 19.4 (1) (d) and, for that purpose, a reference in subsection (3), (4) or (5) to the date determined by the labour relations board under subsection (2) is deemed to be a reference to the date determined by the labour relations board under subsection (5.1).
- (5.3) Despite subsection (5.2), articles of association for the association referred to in that subsection must provide that all decisions of the association require the approval of at least 2 voting members of the association.
- (6) When articles of association have been established under this section, the labour relations board must certify the association for the purposes and procedures set out in subsection (8).
- (7) Articles of association are deemed to be decisions of the labour relations board.
- (8) Despite section 27 of the Code, an association is certified for
- (a) the purposes and procedures under Parts 4 to 7 of the Code, and
- (b) other provisions of the Code that the labour relations board determines are necessary or advisable to apply to the association to better achieve the purposes of the Code

and the certifications held by the individual trade unions that are members of the association remain in effect for all other purposes.

Existing collective agreement applies

19.91 (1) The collective agreements constituted under the *Education and Health Collective Bargaining Assistance Act* continue to apply to the associations established under section 19.9.

- (2) In addition, collective agreements existing on the effective date continue to apply to any employee transferred between bargaining units or employers, unless otherwise agreed to by HEABC and the bargaining agent certified under this Part that will represent the employee for the purposes of collective bargaining after the transfer.
- (3) Despite any other provision of this Part, unless otherwise agreed to by HEABC and the association referred to in section 19.9 (5.1), each collective agreement existing on the date on which this subsection comes into force that applies to employees in the health services and support bargaining unit continues to apply for the term of the collective agreement and for any extension or continuation under any enactment or under the provisions of the collective agreement.

Repealed

19.911 [Repealed 2002-2-24.]

Seniority and service recognition

- 19.92 (1) Seniority and service recognition is portable for any employee who changes bargaining units, bargaining agents or collective agreements as a result of this Part.
- (2) Disputes arising from the operation of subsection (1) must be resolved by the arbitration procedures in Part 8 of the Code.

Transitional – associations of trade unions

- **19.921** (1) This section applies despite section 19.7.
- (2) The consolidated certifications issued by the labour relations board to an association of trade unions for each of the appropriate bargaining units referred to in section 19.4 (1) (b) and (c) are continued.
- (3) The articles of association approved by the labour relations board for the associations of trade unions representing the employees in the bargaining units referred to in section 19.4 (1) (b) and (c) are continued.
- (4) On a date determined by the labour relations board but not more than 120 days after this section comes into force, the labour relations board must approve articles of association for the bargaining unit referred to in section 19.4 (1) (d) that are the same as the articles of association in effect for that bargaining unit under the labour relations board decision No. B73/98 and issue a consolidated certification to the association of trade unions representing employees in that bargaining unit.
- (5) On a date determined by the labour relations board but not more than 120 days after this section comes into force, the labour relations board must approve articles of association for the bargaining unit referred to in section 19.4 (1) (e) that are the same as the articles of association in

effect for that bargaining unit under the labour relations board decision No. B73/98 and issue a consolidated certification to the association of trade unions representing employees in that bargaining unit.

- (6) Articles of association of an association of trade unions referred to in subsections (3), (4) and (5) are deemed to be a decision of the labour relations board.
- (7) The consolidated certification issued by the labour relations board for an association of trade unions for the former health services and support bargaining unit on October 29, 2001 is cancelled and articles of association for that association of trade unions approved by the labour relations board for that former bargaining unit on October 26, 2001 are void 120 days after this section comes into force or on an earlier date if the labour relations board has acted under subsection (4) or (5).

Transitional – regulations

- 19.93 (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing into operation this Part and to prevent any transitional difficulties encountered in so doing, and without limitation, the regulations may, for a period the Lieutenant Governor in Council specifies, suspend the operation of a provision of an enactment if that provision would impede the effective operation of this Part.
- (2) Unless earlier repealed, a regulation under subsection (1) is repealed one year after it is enacted.

Labour Relations Code [RSBC 1996] CHAPTER 244

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Division 1 – Acquisition of Bargaining Rights

Acquisition of bargaining rights

- 18 (1) If a collective agreement is not in force and a trade union is not certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing not less than 45% of the employees in that unit may at any time, subject to the regulations, apply to the board to be certified for the unit.
- (2) If a collective agreement is not in force and a trade union is certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may, subject to the regulations, apply to the board to be certified for the unit if either
- (a) 6 months have elapsed since the date of certification of a trade union for the unit, or
- (b) the board has consented to an application before the expiry of the 6 months.
- (3) Unless the board consents, a trade union is not permitted to make an application under subsection (2) during a strike or lockout.
- (4) Despite this section and section 19
- (a) a trade union that is a party to a collective agreement, but is not certified for the employees covered by it, may apply to be certified at any time, and
- (b) a council of trade unions comprised of trade unions that are parties to collective agreements may apply to be certified at any time in place of those trade unions.

Change in union representation

- 19 (1) If a collective agreement is in force, a trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may apply to the board to be certified for the unit during the seventh and eighth months in each year of the collective agreement or any renewal or continuation of it.
- (2) Despite subsection (1), an application for certification may not be made within 22 months of a previous application under that subsection if the previous application resulted in a decision by the board on the merits of the application.

(3) Unless the board consents, a trade union is not permitted to make an application under this section during a strike or lockout.

Joint application

20 Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Code relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

Craft unions

- 21 (1) If one or more employees belong to a craft or group exercising technical or professional skills that distinguish it from the employees as a whole, and they are members of one trade union pertaining to the craft or skills, the trade union may, subject to sections 18, 19, 20, 24 and 25, apply to the board to be certified as the bargaining agent for the group if it is otherwise an appropriate bargaining unit.
- (2) A trade union claiming to have as members in good standing a majority of the employees in a unit for which a craft or professional trade union is the bargaining agent under this section may apply to the board to have the unit included in another unit, and sections 18, 19, 20, 24 and 25 apply.
- (3) If an application is not made under subsection (2), the employees in the unit for which a craft or professional trade union is the bargaining agent under this section must be excluded from another unit for the purpose of collective bargaining and must not be taken into account as members of another unit for purposes of this Code.

Determination of appropriate unit

22 (1) When a trade union applies for certification as the bargaining agent for a unit, the board must determine if the unit is appropriate for collective bargaining and may, before certification, include additional employees in or exclude employees from the unit.

(2) The board must

- (a) make or cause to be made the examination of records and other inquiries including the holding of hearings it considers necessary to determine the merits of an application for certification, and
- (b) specify the nature of the evidence the applicant must furnish in support of the application and the manner of application.

(3) Membership in good standing in a trade union must be determined on the basis of membership requirements prescribed in the regulations.

Repealed

23 [Repealed 2001-33-3.]

Representation vote required

- 24 (1) If the board receives an application for certification under this Part and the board is satisfied that on the date the board receives the application at least 45% of the employees in the unit are members in good standing of the trade union, the board must order that a representation vote be taken among the employees in that unit.
- (2) A representation vote under subsection (1) must be conducted within 10 days from the date the board receives the application for certification or, if the vote is to be conducted by mail, within a longer period the board orders.
- (3) The board may direct that another representation vote be conducted if less than 55% of the employees in the unit cast ballots.

Outcome of representation vote

- 25 (1) When a representation vote is taken, a majority must be determined as the majority of the employees in the unit who cast ballots.
- (2) If after a representation vote is taken, the board is satisfied that
- (a) the majority of votes favour representation by the trade union, and
- (b) the unit is appropriate for collective bargaining,

the board must certify the trade union as the bargaining agent for the unit.

- (3) If after a representation vote is taken, the board is
- (a) satisfied that the majority of votes are not in favour of the trade union representing the unit as its bargaining agent, or
- (b) not satisfied that the unit is appropriate for collective bargaining,

the trade union may not be certified as bargaining agent for the unit.

Repealed

26 [Repealed 2001-33-5.]

Effect of certification

- 27 (1) If a trade union is certified as the bargaining agent for an appropriate bargaining unit,
- (a) it has exclusive authority to bargain collectively for the unit and to bind it by a collective agreement until the certification is cancelled,
- (b) if another trade union has been certified as the bargaining agent for the unit, the certification of that other trade union is cancelled for the unit, and
- (c) if a collective agreement binding on the unit is in force at the date of certification, the agreement remains in force.
- (2) Despite subsection (1) (c) and except if the trade union party to the collective agreement obtains the certification, the rights and obligations that were conferred or imposed by the collective agreement on the trade union party to the collective agreement cease in so far as that trade union is concerned, and are conferred or imposed on the trade union certified as the bargaining agent.

Dependent contractors

- 28 (1) If an application for certification is made for a unit consisting of, or including, dependent contractors, and the application meets the requirements of sections 24 and 25, the board must
- (a) if there is no other certified unit of employees of the same employer, determine whether the unit applied for is appropriate for collective bargaining and, if so, certify that unit, or
- (b) if there is a certified unit of employees of the same employer, determine whether inclusion of the dependent contractors in the existing unit would be more appropriate for collective bargaining and, if so, require that an application be made to vary the certification.
- (2) If the board has determined under subsection (1) (b) that a variance of the existing bargaining unit would be more appropriate for collective bargaining and an application for variance is made, the board must
- (a) determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that a representation vote be taken as it considers necessary or advisable,

- (b) ensure that reasonable procedures have been developed to integrate dependent contractors and employees into a single bargaining unit,
- (c) modify or restrict the operation or effect of a collective agreement in order to determine the seniority rights under it of employees or dependent contractors, and
- (d) give directions that the board considers necessary or advisable as to the interpretation and application of a collective agreement affecting the employees and dependent contractors in a unit determined under this section to be appropriate for collective bargaining.

Unit partly supervisory

- 29 If a trade union applies for certification as the bargaining agent for a unit consisting of
- (a) employees who supervise other employees, and
- (b) any of the other employees,

the board may certify the trade union for the unit, for a unit consisting only of employees who supervise or for a unit composed of some or all of the other employees.

Repeated applications for certification

30 If the trade union is not certified as the bargaining agent under section 25, or a cancellation of certification is refused under section 33 (4) (b), the board may designate the length of time, not less than 90 days, that must elapse before a new application by the same applicant may be considered.

Prohibited employee associations

- 31 An organization or association of employees
- (a) the formation, administration, management or policy of which is, in the board's opinion, dominated or influenced by an employer or a person acting on his or her behalf, or
- (b) that discriminates against a person contrary to the Human Rights Code,

must not be certified for the employees, and an agreement entered into between that organization or association of employees and the employer is deemed not to be a collective agreement.

No change during certification

32 (1) If an application for certification is pending, a trade union or person affected by the application must not declare or engage in a strike, an employer must not declare a lockout, and an

employer must not increase or decrease rates of pay or alter a term or condition of employment of the employees affected by the application, without the board's written permission.

(2) This section must not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or otherwise discipline an employee for proper cause.

Division 2 – Revocation of Bargaining Rights

Revocation of bargaining rights

- 33 (1) If at any time after a trade union has been certified for a unit the board is satisfied, after the investigation it considers necessary or advisable, that the trade union has ceased to be a trade union, or that the employer has ceased to be the employer of the employees in the unit, it may cancel the certification.
- (2) If a trade union is certified as the bargaining agent for a unit and not less than 45% of the employees in the unit sign an application for cancellation of the certification, the board must order that a representation vote be conducted within 10 days of the date of the application or, if the vote is to be conducted by mail, within a longer period the board orders.
- (3) An application referred to in subsection (2) may not be made
- (a) during the 10 months immediately following the certification of the trade union as the bargaining agent for the unit,
- (b) during the 10 months immediately following a refusal under subsection (6) to cancel the certification of that trade union, or
- (c) during a period designated by the board under section 30 following a refusal under subsection (4) (b) of this section to cancel the certification of that trade union.
- (4) After a representation vote ordered under subsection (2) is held the board must,
- (a) if the majority of the votes included in the count are against having the trade union represent the unit as the bargaining agent, cancel the certification of the trade union as the bargaining agent for that unit, or
- (b) if the majority of votes included in the count favour having the trade union represent the unit as bargaining agent, refuse the application.
- (5) The board may direct that another representation vote be taken if
- (a) a representation vote was taken under subsection (2), and
- (b) less than 55% of eligible employees cast ballots.

- (6) If an application is made under subsection (2), the board may, despite subsections (2) and (4), cancel or refuse to cancel the certification of a trade union as bargaining agent for a unit without a representation vote being held, or without regard to the result of a representation vote, in any case where
- (a) any employees in the unit are affected by an order under section 14, or
- (b) the board considers that because of improper interference by any person a representation vote is unlikely to disclose the true wishes of the employees.
- (7) Despite subsection (10), if the certification of a trade union as the bargaining agent for a unit is cancelled under subsection (6), that trade union must not, during the 10 months immediately following the cancellation, apply for certification as the bargaining agent for employees in the unit.
- (8) Subject to subsection (9), if the certification of a trade union as the bargaining agent is cancelled under any provision of this Code, a collective agreement between the trade union and the employer of the employees in the unit for which the certification is cancelled is void with respect to that unit.
- (9) Nothing in subsection (8) affects the operation of section 27 (1) (c) and (2).
- (10) If the certification of a trade union as the bargaining agent for a unit is cancelled under any provision of this Code, no other trade union may apply for certification as bargaining agent for the employees within that unit until a period of 10 months or a shorter period specified by the board has elapsed.
- (11) On receipt of an application for cancellation of certification the board may cancel the certification of a bargaining agent for a bargaining unit if it is satisfied that the bargaining agent has abandoned its bargaining rights in respect of the employees in the bargaining unit.

Revocation of voluntarily recognized bargaining rights

34 Section 33 applies to the revocation of bargaining rights if a trade union is a party to a collective agreement but is not certified for the employees covered by the collective agreement.

Division 3 – Successor Rights and Obligations

Successor rights and obligations

- 35 (1) If a business or a part of it is sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Code before the date of the disposition and the proceedings must continue as if no change had occurred.
- (2) If a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee, as the case may be.

- (3) If a question arises under this section, the board, on application by any person, must determine what rights, privileges and duties have been acquired or are retained.
- (4) For the purposes of this section, the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.
- (5) The board, having made an inquiry or directed a vote under this section, may
- (a) determine whether the employees constitute one or more units appropriate for collective bargaining,
- (b) determine which trade union is to be the bargaining agent for the employees in each unit,
- (c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement,
- (d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition, and
- (e) give directions the board considers necessary or advisable as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining.

Federal-Provincial successorship

36 If collective bargaining relating to a business is governed by the laws of Canada and that business or part of it is sold, leased, transferred or otherwise disposed of and becomes subject to the laws of British Columbia, section 35 applies and the purchaser, lessee or transferee is bound by any collective agreement in force at the time of the disposition.

Merger or amalgamation

- 37 (1) If a trade union claims that because of a merger, amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was certified or voluntarily recognized as the bargaining agent for a unit, the board may, in a proceeding before the board or on application by the trade union concerned,
- (a) declare that the successor has, or has not, acquired its predecessor's rights, privileges and duties under this Code, or
- (b) dismiss the application.
- (2) Before issuing a declaration under subsection (1), the board may make the inquiries, require the production of the evidence and hold the votes it considers necessary or advisable.

(3) If the board makes an affirmative declaration under subsection (1), for the purposes of this Code the successor acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.

Several businesses treated as one employer

38 If in the board's opinion associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them under common control or direction, the board may treat them as constituting one employer for the purposes of this Code and grant such relief, by way of declaration or otherwise, as the board considers appropriate.

Division 4 – Voting

Voting requirements

- 39 (1) All voting directed by the board or by the minister under this Code and other votes held by a trade union or employers' organization of their respective members on a question of whether to strike or lock out, or whether to accept or ratify a proposed collective agreement, must be by secret ballot cast in such a manner that the person expressing a choice cannot be identified with the choice expressed.
- (2) The results of a vote referred to in subsection (1), including the number of ballots cast and the number of votes for, against or spoiled, must be made available to both
- (a) the members, and
- (b) the trade union and employer affected.
- (3) A vote referred to in subsection (1) must be conducted in accordance with the regulations.
- (4) If the board in its discretion directs that they may vote, the following persons are eligible to vote in a representation vote:
- (a) persons who at the time an application for certification was received by the board were not employees in the proposed unit but are employees in the unit at the time of the vote;
- (b) persons who at the time an application for decertification was received by the board were employees in the unit, but are not employees in the unit at the time of the vote.

Additional voting requirements

40 (1) Subject to section 17 (2), all employees in a bargaining unit, whether or not they are members of the trade union or of any constituent union of a council of trade unions, may

participate in votes held by a trade union of its members on a question of whether to strike or whether to accept or ratify a proposed collective agreement.

- (2) If a trade union coordinates collective bargaining on behalf of more than one bargaining unit, the results of any vote conducted by the trade union of a particular bargaining unit must not be counted until all bargaining units engaged in the bargaining have voted.
- (3) If a vote is conducted by mail, then for the purposes of this Code, the vote is deemed to have been held on the day that ballot papers are left with a post office as defined by the *Canada Post Corporation Act* for transmission to the persons who are to vote or, if the ballot papers are left for that purpose with the post office on different days, on the last of those days.

Division 5 – Councils of Trade Unions

Certification of councils of trade unions

- 41 (1) To secure and maintain industrial peace and promote conditions favourable to settlement of disputes, the minister may, on application by one or more trade unions or on his or her own motion, and after the investigation considered necessary or advisable, direct the board to consider, despite section 18, 19 or 21, whether in a particular case a council of trade unions would be an appropriate bargaining agent for a unit.
- (2) If a direction is made under subsection (1), the board must determine whether
- (a) the proposed bargaining unit is appropriate for collective bargaining, and
- (b) the proposed council of trade unions is representative of the employees in that unit and must make any other examination of records, inquiry or findings including the holding of hearings it considers necessary to determine the matter.
- (3) After a determination under subsection (2) and if the board considers it necessary or advisable the board may
- (a) certify a council of trade unions as the bargaining agent, or
- (b) vary a certification by substituting for the trade union or trade unions named in it a council of trade unions as bargaining agent for that unit.
- (4) The provisions of this Code relating to an application for certification of and to the certification of a trade union apply to an application for certification of and to certification of a council of trade unions.

- (5) The board may make orders and issue directions it considers necessary or advisable respecting the formation of councils of trade unions and the fair representation of the trade unions comprising the council of trade unions.
- (6) If the board certifies a council of trade unions under this section, it may
- (a) determine that no collective agreement is in effect or binding on all or any of the employees in the unit,
- (b) determine whether a provision of a collective agreement is binding on all or any of the employees in the unit,
- (c) determine that a provision in a collective agreement that is in effect and binding on all or any of the employees should continue to be in effect and binding on those employees for a term the board determines,
- (d) extend the provisions of one or more collective agreements that are in effect to all or any of the employees,
- (e) settle the terms and conditions of a new collective agreement based in whole or in part on one or more of the collective agreements in effect and binding on all or any of the employees, and
- (f) make other orders or determinations that may be necessary or advisable to carry out the purposes of this section.

Bargaining council

- **41.1** (1) In this section, "CLRA" means the Construction Labour Relations Association of B.C. incorporated under the *Society Act*.
- (2) The bargaining council established under section 55.18, as that section read before its repeal by the *Skills Development and Labour Statutes Amendment Act*, 2001, is continued, is deemed to be a council of trade unions established under section 41 and is authorized to bargain on behalf of its constituent unions with the CLRA.
- (3) Within 6 months from the date that this section comes into force, the board must review the constitution and bylaws of the bargaining council to ensure that they are consistent with section 41.

Dissolution of councils of trade unions

42 (1) A constituent union of a council of trade unions must not withdraw from the council of trade unions unless it obtains the consent of the board and complies with subsection (2) or (3).

- (2) If a council of trade unions is a party to or is bound by a collective agreement, no resolution, bylaw or other action by the constituent trade unions of that council of trade unions to dissolve the council of trade unions, or by a constituent trade union of that council of trade unions to withdraw from the council of trade unions, as the case may be, has effect
- (a) unless a copy of the resolution, bylaw or other action is delivered to the employer and, in the case of a withdrawal, to the other constituent members and to the council of trade unions, at least 90 days before the collective agreement ceases to operate, and
- (b) until the collective agreement ceases to operate.
- (3) If a council of trade unions is not a party to or bound by a collective agreement, no resolution, bylaw or other action by the constituent trade unions of that council of trade unions to dissolve the council of trade unions, or by a constituent trade union of that council of trade unions to withdraw from the council of trade unions, has effect until the 90th day after the day a copy of the resolution, bylaw or other action is delivered to the employer and, in the case of a withdrawal, to the other constituent members and to the council of trade unions.

Division 6 – Employers' Organizations

Accreditation of employers' organization

- 43 (1) Despite this Code or a collective agreement, an employers' organization may, subject to the regulations, apply to the board to be accredited as bargaining agent for the employers named in the application.
- (2) The board must
- (a) make or cause to be made the examination of records or other inquiries, including the holding of hearings it considers necessary to determine the merits of the application, and
- (b) specify the manner of application and the nature of the evidence that the applicant must furnish in support of the application.
- (3) The board may, before accreditation, add the names of additional employers to or delete the names of employers from those named in the application.
- (4) If after the inquiry the board considers adequate it is satisfied the employers named in the application, or in the application as amended under subsection (3),
- (a) constitute a group appropriate for collective bargaining,
- (b) are members of the employers' organization applying or have been added to the application under subsection (3), and

- (c) have agreed to accreditation of the applicant as bargaining agent,
- the board may accredit the employers' organization as bargaining agent for the employers named in the accreditation.
- (5) If an employers' organization is accredited under this section, it has exclusive authority for the time the employer is named in the accreditation to bargain collectively for the employer and to bind the employer by collective agreement.
- (6) If an employer named in an accreditation applies to the board to amend the accreditation by deleting the employer's name from it, and
- (a) the employer has been included in the accreditation for 2 years, and
- (b) the employer makes the application not less than 9 months before the expiry date of all collective agreements entered into by the employers' organization on the employer's behalf,

the board must grant the application.

Employers' organization membership and fees

- 44 (1) An employers' organization must not
- (a) refuse membership in the employers' organization to an employer, or
- (b) terminate an employer's membership in the employers' organization
- except for a cause that is in the board's opinion fair and reasonable.
- (2) An employers' organization must not charge or levy initiation fees, dues or assessments that are in the board's opinion unreasonable or discriminatory.

Public Service Labour Relations Act

[RSBC 1996] CHAPTER 388

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Definitions

1 (1) In this Act:

"agency of the government" means a board, commission, association or other body, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which,

- (a) are appointed by an Act or by the Lieutenant Governor in Council, or
- (b) if not appointed are, in the discharge of their duties, public officers or servants of the government, or, for the proper discharge of their duties are directly or indirectly responsible to the government;

"bargaining agent" means

- (a) a union certified by the board as an agent to bargain collectively for a bargaining unit, or
- (b) the agent designated under section 3 (1) to bargain on behalf of the government;
- "bargaining unit" means a unit of employees appropriate for collective bargaining referred to in section 4;

"board" means the Labour Relations Board under the Labour Relations Code;

"collective agreement" means a duly executed written agreement between the bargaining agent for the government and a bargaining agent for a bargaining unit containing provisions respecting the terms and conditions of employment of employees, including rates of wages or salary, hours of work or other working conditions of employees;

"collective bargaining" or "bargain collectively" means

- (a) negotiating in good faith to conclude a collective agreement, or a renewal or revision of a collective agreement,
- (b) reducing to writing the terms of agreement arrived at respecting matters required to be inserted in a collective agreement by this Act, and other matters agreed to by the parties, and
- (c) negotiating to settle disputes and grievances of employees included in the agreement, or represented by an employees' bargaining agent;

"Crown corporation" means an agency of the government that is a corporation whose employees

- (a) are not employed or appointed under the Public Service Act, or
- (b) are not declared by an Act to be public servants within the meaning of the *Public Service Act*;

"day" means a calendar day;

"division" means the BC Public Service Agency continued under section 5 of the Public Service Act;

- "employee" means an employee as defined in the *Public Service Act*, or a person employed by or holding office at the pleasure of the government, but does not include any of the following:
- (a) a deputy minister, associate deputy minister or assistant deputy minister;
- (b) a practising lawyer or articled student as defined in section 1 (1) of the Legal Profession Act, who is engaged in the practice of law;
- (c) a justice;

- (d) a person authorized under an enactment to practise as a medical practitioner in British Columbia who is engaged in and working in the practice of that profession;
- (e) a registrar, district registrar, deputy registrar or assistant deputy registrar of a registry of a court;
- (f) a sheriff;
- (f.1) a person employed as an industrial relations officer or employment standards officer of the Employment Standards Branch;
- (f.2) a person appointed under the *Public Service Act* to exercise the powers of or perform the duties of
- (i) the director under Part 5 of the Residential Tenancy Act, or
- (ii) the director under Part 6 of the Manufactured Home Park Tenancy Act;
- (f.3) a person appointed under the *Public Service Act* to perform the duties of a workers' adviser or employers' adviser under section 94 of the *Workers Compensation Act*;
- (f.4) a person appointed under section 54 of the Coroners Act or retained under section 55 of that Act to perform the duties of a coroner;
- (f.5) a person appointed to serve as an investigator under section 38.06 (2) [IIO investigators] of the *Police Act*;
- (g) [Repealed 1998-37-35.]
- (gg) a person employed in the Teacher Regulation Branch of the Ministry of Education;
- (h) a person employed as a personnel officer;
- (hh) a member of the staff of the Auditor General for Local Government under the Auditor General for Local Government Act.
- (i) [Repealed 1998-37-35.]
- (j) a person employed for a period of less than 31 days;
- (k) [Repealed 1998-37-35.]
- (l) a person who is not appointed under the *Public Service Act* and is employed by or in the service of any of the following:
- (i) a Crown corporation;

- (ii) the Queen's Printer under the *Queen's Printer Act*, other than clerical or administrative employees;
- (iii) the British Columbia Utilities Commission under the Utilities Commission Act;
- (iv) the Insurance Corporation of British Columbia under the Insurance Corporation Act;
- (m) a chief court administrator or regional court administrator;
- (n) a person employed as a member of the staff of the Auditor General;
- (o) a person principally engaged in carrying out duties that protocol requires the government to perform;
- (p) a member of the staff of the Ombudsperson;
- (q) a person employed in the Provincial Treasury Division, the Treasury Board Staff Division, the Office of the Chief Investment Officer, the Economics and Policy Division, the Financial Management Branch and the Internal Audit Branch of the Ministry of Finance;
- (r) a person employed in the division;
- (s) a person employed as a trade development officer;
- (t) a person employed in the Office of Legislative Counsel;
- (u) a person employed in the Legal Services Branch of the Ministry of Justice;
- (v) a person employed in the office of Government Communications and Public Engagement;
- (w) an internal auditor in a ministry;
- (x) a person employed with the Cabinet Secretariat;
- (y) a person employed to provide administrative or clerical support services to a judge of a court in British Columbia;
- (z) and (aa) [Repealed 1998-37-35.]
- (bb) a person employed in the Office of the Superintendent of Financial Institutions or by the Financial Institutions Commission established under the *Financial Institutions Act*;
- (cc) a person employed under section 9 of the Securities Act;
- (dd) a person employed by the property assessment appeal board;

- (ee) a member of the staff of the Chief Electoral Officer;
- (ff) a member of the staff of the Representative for Children and Youth;
- "government" includes an agency of the government;
- "lockout" includes
- (a) the closing of a place of employment,
- (b) the suspension of work, or
- (c) a refusal by the government to continue to employ a number of its employees,

done to compel its employees, or to aid another employer to compel employees, to agree to terms and conditions of employment;

"minister" includes a person designated in writing by the minister;

"occupational group" means a group of employees in a bargaining unit with a similar occupation, trade, profession or activity as determined under section 10;

"strike" means "strike" as defined in the Labour Relations Code;

"technological change" means

- (a) the introduction by the government into its work, undertaking or business of equipment or material of a different nature or kind than that previously used by the government in that work, undertaking or business, or
- (b) a change in the manner, method or procedure in which the government carries on its work, undertaking or business that is directly related to the introduction of that equipment or material,

that significantly decreases the number of employees, but does not include normal layoffs resulting from a decrease in the amount of work to be done;

- "union" means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between the government and its employees through collective bargaining, and includes a council or association of unions.
- (2) A person does not cease to be an employee within the meaning of this Act merely because of
- (a) ceasing to work as a result of a strike that is not contrary to this Act, or

(b) a lockout or dismissal that is contrary to this Act.