



St. John's
BOARD OF TRADE

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OFFICE OF THE PRESIDENT

Federal Labour Standards Review
165 Hotel de Ville
Phase II, Place du Portage
Gatineau, Quebec
K1A 0J2

RE: Review of Part III of the Canada Labour Code

Dear Commissioner:

The St. John's Board of Trade is pleased to provide commentary as part of the review of Part III of the *Canada Labour Code (CLC)*.

The St. John's Board of Trade is the largest board of trade/chamber of commerce in Newfoundland and Labrador, the largest association representing business in the St. John's region, and one of the leading boards/chambers in the region and the country. With approximately 750 member companies of all sizes and from virtually all sectors of the Newfoundland and Labrador economy, the St. John's Board of Trade is a preeminent voice for business in the province. On issues that are national in scope, we often work through the Canadian Chamber of Commerce and the national chamber network.

Competition for workers is high. Canada's unemployment rate is hitting its lowest levels in almost three decades, and stood at 6.7% as of September 2005, according to Statistics Canada's Labour Force Survey. We are hearing more and more of critical labour shortages, and resulting wage increases, in several sectors of the economy, including construction, manufacturing and oil and gas, which translate into higher labour costs for employers. Strong labour demand, which is prevalent in all sectors and in every region of the country, has led to conditions under which workers are better able to negotiate working conditions.

A skilled and productive workforce, made up of our invaluable human capital, is essential to maintain long-term economic growth, competitiveness and prosperity in Canada, especially in light of our country's growing role in an increasingly globalized, knowledge-based economy. It must be clearly understood that Canada's potential for economic growth will be enhanced if our regulatory regime is kept conducive to fostering workplace and labour productivity.

This requires flexibility in the labour market. In its submission to this review, the Canadian Chamber of Commerce noted that, "Over the long term, flexibility is the key to an efficient labour market that has strong job creation, low unemployment, and is highly productive." Canadian business, and therefore our economy, will benefit from a flexible labour code that is in keeping with the federal government's Smart Regulation initiative. The *CLC* can meet the changing needs of employers and market conditions, while at the same time maintaining adequate protection for workers.

With these points in mind, this submission touches on some of the key questions posed in the federal government's consultation paper titled "Modernizing Federal Labour Standards: Review of Part III of the *Canada Labour Code*".

I. Setting the Bar for Federal Labour Standards

The objective of Part III of the *CLC* should be to set out *minimum* standards of employment in areas such as hours of work, minimum wage levels, vacation eligibility, and requirements for termination of work. The provisions under

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Part III of the *CLC* will provide a minimum level of protection for workers while ensuring an appropriate degree of flexibility for employers, so that their competitiveness and viability are not hampered.

Workplace Agreements

When it comes to the basic contract of employment, employers and employees – the workplace parties – are in the best position to negotiate mutually beneficial agreements, based on their particular conditions and circumstances. This will allow employees to be involved directly in developing and implementing workplace agreements, which could be designed to fit the needs of both staff and the employer. And, agreements could cover not solely rights, but mutual interests and responsibilities, as well. With both parties benefiting from such company level agreements, then prospects for productivity improvement are enhanced.

Recommendation #1: The objective of Part III of the CLC should be to set out minimum standards of employment, providing a minimum level of protection for workers, while ensuring an appropriate degree of flexibility for employers, so that their competitiveness and viability are not hampered.

Recommendation #2: Company level agreements that are developed jointly by employers and employees so that they are mutually beneficial to both, should be encouraged and not restricted by the CLC.

II. Looking at Existing Labour Standards: What Works? What Does Not Work?

Hours of Work/Overtime Exemptions

Under Part III of the *Code*, employees who are managers or who perform management functions are exempted from hours of work requirements, including overtime. These exemptions should be maintained. Additionally, however, the provisions in this section should be broadened to also exclude employees who are not designated managers or do not exercise traditional management functions, but who are highly paid, manage their own hours of work, and work independently. As well, an income level threshold could be put in place, beyond which an employee does not qualify for overtime.

Recommendation #3: The Code's provisions should continue to exempt managers from hours of work requirements (e.g. overtime) and should be broadened to also exclude employees who are not designated managers or do not exercise traditional management functions, but who are highly paid, manage their own hours of work, and work independently. An income level threshold, beyond which an employee does not qualify for overtime, could also be put in place.

III. New Forms of the Employment Relationship

Self-Employed

There is an increasing number of self-employed individuals in Canada – to this point in 2005, self-employment has increased by roughly 3.2%, well outpacing gains in both private sector and public sector workers, according to Statistics Canada's September 2005 Labour Force Survey. The provisions of the *CLC* are designed to protect workers who are directly employed by an employer(s), and should not be extended to cover these self-employed persons. Many of the self-employed individuals who go into business as independent contractors are highly skilled and in specialized lines of work. This arrangement often provides the self-employed person with the flexibility of choosing his/her projects, and employers with the flexibility within their human resources to obtain specialized personnel, skills and knowledge as needed.

Minimum Wage

Research has shown that high minimum wages can reduce employment opportunities for young and unskilled workers, increase school dropout rates, discourage employers from hiring and investing in employee training, reduce fringe benefits for workers, and result in layoffs. Furthermore, high minimum wages restrict the ability of employers and their employees to negotiate mutually beneficial contracts. The federal government has a responsibility to implement policies that do not result in negative employment effects, but rather allow employers to offer affordable training to workers and encourage continuing education of young Canadians. Reasonable wage rates promote greater Canadian productivity and competitiveness.

Federal minimum wage is set at the minimum wage level of the province in which the employee is usually employed. The current provisions for determining minimum wage are acceptable as is.

Recommendation #4: *Do not extend the provisions contained in Part III of the Canada Labour Code to cover self-employed individuals.*

Recommendation #5: *Maintain the current provisions in the CLC for determining the minimum wage.*

IV. Balancing Work and Personal/Family Responsibilities

In its submission to this review, the Canadian Chamber of Commerce stated, “Balancing work and personal responsibilities is a challenge for both employees and employers. Employers have recognized that by reducing work-life conflicts, individuals can enjoy a healthier lifestyle while improving productivity at work.” Again, government over-regulation in this area limits the flexibility to design and implement effective work-life balance programs.

Recommendation #6: *The federal government must consult with business when developing work-life balance programs that impact their employees, so that the federal government has an understanding of how government programs impact the operations of business.*

V. Workplace Productivity

In his address to the St. John’s Board of Trade on September 15, 2005, federal Minister of Industry, The Honourable David Emerson, referred to Canada’s current state of economic growth and the challenges to its future productivity and place in the global economy:

“The reality is we are part of an intensely global economy, in which yesterday’s performance is no guarantee of tomorrow’s success....I worry about the aging demographics of our country, and the limited potential for growth in our workforce in the years ahead. I worry that despite Canada’s strong economic performance over the past decade, we still see a lingering 15 percent productivity gap with the U.S.”

Clearly, productivity growth will be increasingly important for Canada if we are to provide the fiscal resources to support critical future investments in education, health and wellness, infrastructure, etc., all of which are closely tied to our quality of life and competitiveness. But, at present, we are just trying to play catch-up with the United States. Our productivity growth languished at a rate of 0.1% in 2004, not near enough to close the gap. According to a recent report from RBC Financial Group (*The Diversity Advantage: A Case for Canada’s 21st Century Economy*, October 20, 2005) Canada has a “long-standing weakness on productivity growth”. We are not where we need to be, especially in light of the “new” economies of China and India surging ahead, and increasingly acute skills shortages and demographic challenges.

Encouraging productive economic activity requires flexibility in our labour laws. The Canadian Chamber points out that empirical evidence from other parts of the world indicates that jurisdictions with flexible labour markets have higher job creation, more benefits from technological change, and overall faster economic growth; while rigid labour relations laws increase unemployment and reduce worker participation rates.

Training

Policy-makers and stakeholders need to gain a better understanding of the barriers to providing worker training that employers face. Typically, small and medium-sized companies face the most significant barriers, as they are the most challenged in terms of i) the time and resources at their disposal, and ii) their access to networks, expertise, and information related to training options and sources.

Employers should be assisted in finding information on how best to conduct employee training. However, the federal government should not attempt to legislate mandatory employee training.

Recommendation #7: Do not attempt to legislate mandatory employee training.

VI. Diversity and Changing Demographics in the Labour Market

Employment Equity and Gender Equality

Canada's economic competitiveness is also boosted by diversity, including a diverse labour market. Canada is recognized as a leader in this area, including employment equity. The *Employment Equity Act* is designed to achieve workplace equality for 1) women, 2) aboriginal groups, 3) persons with disabilities, and 4) visible minorities, such that employers are bound to address employment disadvantages experienced by those groups. This means removing barriers, as well as taking measures to encourage fairness and ensure workplace accommodation. Federally regulated employers are required to submit an annual employment equity report, and have made significant investments in personnel and reporting systems in order to comply with the *Employment Equity Act*.

As it is now, the *Employment Equity Act* and the *Canadian Human Rights Act* together adequately protect the rights of employees. Therefore, there are no amendments necessary for Part III of the *CLC* to better meet the needs of women specifically or to promote greater gender equality in the workplace.

Recommendation #8: Do not amend Part III of the *CLC* in an attempt to better reflect gender equality and meet the needs of women, specifically.

VII. Modernizing and Clarifying the Code's Enforcement and Administrative Provisions

As should be the case for any piece of federal government legislation, the laws pertaining to the *Canada Labour Code* should be written as clearly and plainly as possible. Employers could then better understand the legislative measures with which they have to comply. Further, the federal government should make information readily available to assist employers to better understand the *Code* and other legislation. In addition, employers have suggested that pertinent information with respect to legal rights and obligations under Part III of the *CLC* could be made available on-line or via phone help-lines.

Recommendation #9: The federal government should make information accessible on-line and through phone help-lines where employers can ask questions of experts regarding their rights and obligations under Part III of the Code.

Conclusion

It is important to consult with the Canadian business community on legislation and other matters that directly affect them, and we would encourage the federal government to ensure it continues to take this approach.

As can be the case with any government legislation, Part III of the *CLC* contains a number of provisions that, in isolation, may seem reasonable and bearable for employers to comply with. However, the cumulative impacts of all these provisions can be very burdensome.

Income levels and the overall standard of living will rise as Canada achieves greater economic growth and productivity, not vice versa. It is in the best interests of both employers and employees to work together to achieve this. In the words of Minister Emerson, "Our standard of living and our quality of life are shaped by our ability to thrive and compete in an increasingly competitive global economy. If we can't compete, we are vulnerable – vulnerable economically and socially."

Again, Canada's economic growth potential will be enhanced if the federal regulatory regime is conducive to fostering workplace and labour productivity. Flexible, "smart" regulation in our labour code and other legislation is key. By ensuring its flexibility, the *Canada Labour Code* can meet changing needs of employers and market conditions, while at the same time maintaining adequate protection for workers.

Thank you again for inviting input to this review. If you have questions or would like clarification on any of the points raised in this letter, please do not hesitate to contact the St. John's Board of Trade at (709) 726-2961.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Thompson", with a long horizontal flourish extending to the right.

Marilyn Thompson
President