# Labour Standards for the 21st Century:

**A Submission by**

**International Longshore and Warehouse Union - Canada**
**~ and ~**
**Grain Services Union (ILWU • Canada)**

**To the Commission reviewing Part III of the Canada Labour Code**

September 6, 2005

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**International Longshore and Warehouse Union - Canada**
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This brief to the Commission reviewing Part III of the Canada Labour Code is being presented on behalf of the International Longshore and Warehouse Union - Canada ("ILWU - Canada") and Grain Services Union (ILWU • Canada) ("GSU").

ILWU - Canada represents working people who are engaged in Canada's West Coast long shoring, freight handling and maritime sector. GSU represents working people in the prairie provinces who are engaged in agribusiness, grain handling, and related activities. GSU affiliated with ILWU - Canada on May 1, 1995. Together ILWU - Canada and GSU represent nearly 6,000 working people who provide vital services in Canada's import/export supply chain.

Also included in the larger constellation making up ILWU - Canada are approximately 8,000 working people employed in the retail, wholesale and service sectors of British Columbia and Saskatchewan. Through ILWU - Canada, a total of 14,000 working people are affiliated to the Canadian Labour Congress.

The overwhelming majority of the 6,000 ILWU - Canada and GSU members are covered by federal labour legislation. Our collective experience is the source of this presentation in favour of amending, updating and upgrading labour standards set out in Part III of the Canada Labour Code (the Code).

We respectfully submit that a comprehensive review of the Code is long overdue. Accordingly, ILWU - Canada and GSU welcome the initiative of the Honourable Joseph Fontana in commissioning the Federal Labour Standards Review. We endorse the submissions of the Canadian Labour Congress to Commissioner Arthurs and colleagues.

## Statement of Labour Standards Principles

At the outset, it is our submission that federal standards should be the benchmark for labour standards legislation and regulation in Canada. We propose the federal standards be the leading example to legislators across the country. The national government should foster an environment in which the threshold conditions of work across the country better reflect the common wealth of our society.

A second basic tenet of this submission is that coverage of Part III of the Code should be universal within its jurisdiction. In other words, there should be no exclusions from coverage or access based on scope of job classification, rank, or title. In our view, universality is an essential precondition to awareness, improving standards, acceptance of the law and compliance with the law.

A third essential ingredient to fashioning modern labour standards is consistent coverage. It is our submission that exemption, variation, relaxation, or modification of standards should only be considered following extensive and transparent consultation, impact analysis, and democratic approval, via secret ballot, by a majority of 75 per cent of the working people affected.

Finally, effective administration and enforcement of labour standards legislation is essential. The abundance of available evidence suggests enforcement of labour standards rights, regardless of jurisdiction, is problematic for many, if not the majority, of non-unionized workers, particularly the most vulnerable.

In our opinion, the work of the Commission will come to no useful end if there is not an effectively designed, properly resourced, assertively administered, and thoroughly communicated strategy(s) for effectuating the spirit and intent of the standards set out in the Code. Modern labour standards should be matched by the allocation of adequate governmental resources to oversee and deliver on the promise inherent in the legislation. And, it is also our submission it is time to undo years of underfunding and the subordination of federal labour legislation/programs to other agendas.

ILWU - Canada and GSU urge the re-establishment of the Department of Labour as a stand-alone department of the federal government with its own budget, its own minister, and a clear mandate to oversee the administration and development of labour legislation.

With the foregoing as our backdrop, ILWU - Canada and GSU recommend the following amendments to the Code for consideration by the Commission. We hasten to add that our recommendations are not an exhaustive list of the changes we would like to see implemented. We are confident other unions, labour organizations and progressive groups of people will also make constructive and worthy proposals.

## ILWU - Canada and GSU recommended amendments to Part III of the Canada Labour Code

### Division I - Hours of Work

1. Given the scope and impact of technological advances in industry and the growth of the economy since the Code was last reviewed, we propose reducing the standard hours of

work below the current threshold of eight (8) hours per day/40 (forty) hours per week. And, although there is debate in Germany and France in relation to rolling back their reduced work week gains, it is our respectful submission that the Canadian economy is versatile enough and dynamic enough to be able to incorporate a 38 (thirty-eight) hour work week as the standard.

It might surprise the Commission to learn that the eight (8) hour day/ 40 (forty) hour work week only became the standard in the prairie grain handling industry on February 1, 2001. In our view, waiting another 100 years to modernize standards around hours of work is not reasonable.

2. Division I's silence on the subject of rest breaks should be addressed by an amendment to implement two 15 (fifteen) minute rest breaks at the approximate mid-point of each half of a work shift. Such an amendment would simply recognize the practices of modern work places.

3. The concept of averaging hours of work over periods of two weeks or longer, as provided in Sections 169 and 170 of the Code, should be severely curtailed or be removed altogether from the legislation. In the experience of ILWU - Canada and GSU members, averaging of working hours is seldom more than a device to avoid paying overtime pay. And, averaging has the collateral effect of subjecting workers and, by extension, their families to an inordinate degree of employer control and/or influence.

   In addition to the above, if the process for granting or enabling averaging or other modifications of standard hours of work is to be continued in some form or limited circumstances, it should be revamped to oblige the Department to convene a forum to evaluate the circumstances and facts behind each averaging/modification request. Following the evaluation/debate, a supervised secret ballot vote of the workers affected should be conducted. Any process allowing individually signed agreements or waivers in relation to hours of work averaging/modification should be abandoned.

4. With respect to part-time workers, many of whom are the lowest paid and most vulnerable in our economy, ILWU - Canada and GSU propose implementation of a concept called "most available hours" (m.a.h.).

   The m.a.h. concept enables part-time workers to declare their availability for work in time blocks or schedule periods and to maximize their employment in the establishment by claiming hours the employer makes available. The employees' right to claim available part-time hours of work is based on length of service with the employer, subject to ability and qualifications.

   M.a.h. does not require an employer to create additional hours of work for part-time workers, but when additional work is required it can be claimed by the individual, as described above, within the context of her/his declared availability. M.a.h. does not require the part-time worker to become full-time or to expand her/his hours unless she/he makes that choice.

Recently the m.a.h. concept was briefly raised under the auspices of the Saskatchewan Labour Standards Act after a ten (10) year dormancy as an unproclaimed provision of the Act. Unfortunately, the proposed implementation of the provision became the subject of a shrill and fact-bereft counter lobby by business organizations. Eventually, the Saskatchewan Government capitulated to the business campaign and repealed the provision thereby eliminating a significant opportunity to enable more balanced part-time arrangements.

We raise the m.a.h. concept in the context of this review knowing there will be intense debate about the subject, but also in the hope the idea of assisting those most at risk in the economy will get an honest hearing. It is time to take genuine and innovative steps to provide a hand up to part-time workers seeking to maximize their economic potential.

## Division II - Minimum Wage

ILWU - Canada and GSU propose re-establishment of a federal minimum wage independent of provincial minimum wage rates. In our view, the current practice of linking the federal standard to the provincial jurisdiction in question creates a patchwork contradicting the idea of uniform federal standards.

The minimum wage should be a living wage sufficient to provide sustenance to the worker and her/his family. We propose that by progressive steps the federal minimum wage should be raised to 75 (seventy-five) per cent of the average industrial wage. We also propose indexing the minimum wage to the annual increase in the average wage or the consumer price index, whichever is greater. In current terms, this would mean a minimum wage of $14.50 per hour of work.

Recognizing the gaps confronting minimum wage workers, we propose a companion amendment to Division II of the Code which would require employers to provide group sick leave, extended health, long-term disability and life insurance coverage to workers on a 50/50 cost sharing basis after workers have completed 300 hours of employment.

## Division IV - Annual Vacation

It is our respectful submission that renovation of annual vacation standards is timely. Accordingly, we propose the following :

- After one (1) year of service, three (3) weeks vacation with six (6) per cent of annual wages as vacation pay.

- After eight (8) years of service, four (4) weeks vacation with eight (8) per cent of annual wages as vacation pay.

- After 15 (fifteen) years of service, five (5) weeks vacation with ten (10) per cent of annual wages as vacation pay.

## Division V - General Holidays

We propose adding tenth and eleventh general holidays to the nine currently provided in the Code. In this regard, a Monday in mid-February and the first Monday in August seem appropriate. In addition, we suggest deleting the cumbersome and inequitable provisions of the Code surrounding administration of general holiday entitlements. In our view, the law should ensure every worker in the jurisdiction, regardless of time served or employment in continuous operations, is afforded access to the general holidays or payment in lieu at time-and-one-half. We also propose to eliminate the unequal treatment of workers engaged in longshoring and/or multi-employer units by deleting subsections (2) and (3) of Section 19. of the Canada Labour Standards Regulations. It is our opinion these workers should be entitled to the same general holiday benefits as everyone else covered by the Code.

## Division VII - Maternity Leave, Parental Leave and Compassionate Care Leave

Although employment insurance benefits are not covered by the Code, we urge the Commission to recommend amendment of the Employment Insurance Act to provide maternity, parental and compassionate care benefits equal to 75 (seventy-five) per cent of the earnings of workers who take the mandated leaves of absence. And, we recommend elimination of any waiting periods currently applicable.

It is altogether insufficient that a country as wealthy as Canada does not provide adequate income protection to workers who undertake these essential social tasks, particularly when the Employment Insurance Fund is virtually bursting at the seams with the accumulated contributions of working people and their employers. A progressive step in this area will buttress the economic position of women workers who almost exclusively shoulder the responsibilities and the costs associated with these types of leaves of absence from the workforce.

## Division IX - Group Termination of Employment

As they are written, the group termination provisions of the Code appear to provide reasonable notice of downsizing and restructuring of business operations. However, the administration of this aspect of the Code falls considerably short of the mark as the trigger for actualizing the restructuring process is based on Employment Insurance (E.I.) regions.

Under the current administrative regime, the 50 (fifty) or more displaced worker threshold can be evaded by spreading layoffs over more than one E.I. region and by staggering the effective dates of layoffs. ILWU - Canada and GSU members have direct experience with employers who

have dramatically reduced their work forces on a provincial or pan-provincial basis by as much as 50 (fifty) per cent over a four (4) year period without ever being required to adhere to the group termination provisions of the Code.

To make the group termination provisions meaningful, we recommend the threshold of 50 (fifty) be reduced to 30 (thirty) affected workers or ten (10) per cent of the employer's workforce, whichever is the lesser, without regard to location or region.

## Division X - Individual Termination of Employment

We propose renaming this provision of the Code "Notice of Layoff". And, we propose including the following notice of layoff provisions.

- For a layoff of less than two (2) weeks, advance notice equivalent to the length of the layoff or pay in lieu.
- For a layoff of more than two (2) weeks but less than three (3) weeks, two (2) weeks notice or pay in lieu, regardless of length of service.
- For a layoff of three (3) weeks or longer, one week of notice for each year of service to a maximum of 16 (sixteen) weeks of notice or pay in lieu.

## Division XI - Severance Pay

The severance pay provisions of the Code are woefully inadequate and do not even begin to approximate civil or collective agreement standards. The present standards, as well as the recommendations we are making, certainly do not begin to replicate the severance packages regularly granted to corporate executives. That being said, we recommend a standard of three (3) weeks pay for each year of service, prorated for partial years, all of which would be payable to the severed worker without regard to her/his entitlement to a pension.

In addition to the above, we again recommend the Commission consider advising the federal government to amend the Employment Insurance Act in this instance to remove the stipulation that receipt of severance pay delays or disqualifies the displaced worker from receiving E.I. benefits.

## Division XIII - Sick Leave

The sick leave protection granted by the Code is generally progressive. However, it does not address the practical questions of income protection or prolonged illness. Bearing in mind our recommendations in relation to Division II of the Code, we recommend protection from dismissal on account of absence due to illness be redefined to include twelve weeks per calendar

year. And, again we recommend the Employment Insurance Act be amended to enable workers to gain access to E.I. benefits after two (2) weeks of illness.

## Access, Compliance and Enforcement

We acknowledge that even with a superbly resourced Department it will not be possible to audit every workplace in an effective and timely manner. Complaints will continue to play a major and probably the primary role in labour standards administration. To assist in establishing a more effective regulatory regime we suggest the following approaches.

- Permitting third-party complaints by unions and/or publicly-funded worker resource centres.
- Printing the legislation in easy to understand conversational language(s) and making handbooks or guides to labour standards easily accessible in hard copies and on line. Requiring employers to distribute labour standards handbooks to all workers in their enterprise.
- Promoting labour standards via electronic media and school-based education programs.
- Requiring employers to provide labour standards orientation to new workers and refresher sessions for longer term workers.
- Acting on and reinforcing universality.
- Providing the benefit of the doubt to complainants and establishing a reverse onus on employers to disprove claims.
- Providing explicit reverse onus protection to workers in relation to discipline or dismissal in the aftermath of a complaint.
- Establishing substantial financial penalties for repeat violators and employers who discipline complainants.
- Establishing complaint tribunals, similar to labour relations boards, to act as the final arbiter of labour standards complaints.

There is no one thing or single approach that will make labour standards protections more accessible and universally honoured. A variety or combination of measures will be required in order to realize effective access, compliance, and enforcement. Certainly, creating awareness of the rights provided in the Code and communicating our shared responsibility to uphold labour standards will contribute significantly to a receptive environment.

## Conclusion

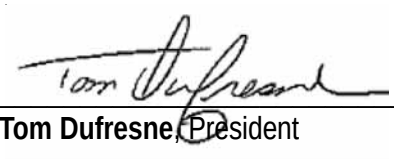
The proposed amendments we advocate are potentially far reaching in their scope and breadth. If adopted, they will have a significant impact for all workers under federal jurisdiction, particularly those most at risk who also tend to work in non union situations. However, if the Code is to be amended only once every 40 (forty) years, it is our submission the benefit of the doubt as to impact should go to the workers.

Will employers and the economy be negatively affected by the measures we advocate? We think the economic well-being of Canada will be no more at risk than the most disadvantaged of our citizens. We subscribe to the view that a rising tide raises all ships.

What we have for ourselves, we want for all others.

All of which is respectfully submitted on behalf of the members of the International Longshore and Warehouse Union - Canada and Grain Services Union (ILWU • Canada).

**International Longshore and Warehouse Union - Canada**



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