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EMPLOYMENT STANDARDS ACT REFORM PROJECT

Backgrounder

Introduction to the Employment Standards Act Reform Project

INTRODUCTION

The British Columbia Law Institute has begun work on a two to three-year project to review and make recommendations for reform of British Columbia's *Employment Standards Act*¹. No comprehensive review of the Act has been carried out in over 20 years.

Since that time, patterns of work and employment in British Columbia have evolved considerably. However, the Act is still closely tied to a model of the workplace as it existed before the revolution in digital and communications technology, characterized by an 8-hour day and 40-hour week with fixed hours of work performed in a fixed locality. Today's workplace, by contrast, may be much more flexible – with irregular hours, variable localities, and workplaces where employers exercise supervision over employees who may not be working in the presence of one another. Regulation of youth, temporary, and independent workers have become more challenging as well.

The BCLI has been encouraged to undertake a project on the *Employment Standards Act* because it does not adequately address the contemporary needs and circumstances of British Columbia's workplaces and is overdue for a review.

The goal of this project is to carry out a thorough analysis of the *Employment Standards Act* and arrive at tentative recommendations for its improvement that will be published in a consultation paper to collect input from the public. This input will then be used to formulate recommendations for reform of the Act, which will be contained in the project's final report. BCLI is carrying out the project with the assistance of an all-volunteer committee made up of experts in the field of employment law.

The commencement of this project was made possible through a generous grant from the Law Foundation of British Columbia.

¹ R.S.B.C. 1996, c. 113.

MEMBERS OF THE PROJECT COMMITTEE

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| Tom Beasley—Chair <i>Bernard LLP</i> | Hon. Marion J. Allan <i>Clark Wilson LLP</i> <i>BCLI Board Member</i> (2014-2015) |
| Prof. Robert G. Howell Faculty of Law, University of Victoria <i>BCLI Board Member</i> (2015 – present) | Susan P. Arnold <i>Sheen Arnold McNeil</i> |
| Dan Cahill <i>BC Government and Service Employees' Union</i> | David Ages <i>Former Employment Standards Regional Branch Manager</i> |
| Charles Gordon <i>Koskie Glavin Gordon</i> | Doug Alley <i>The Alley Group</i> |
| Donald J. Jordan <i>Harris & Company, LLP</i> | Bruce A. Laughton, Q.C. <i>Laughton & Co.</i> |
| Devyn Cousineau <i>BC Human Rights Tribunal</i> | Peter F. Parsons <i>Farris Vaughan Wills and Murphy LLP</i> |
| Andrea Zwack <i>Gall Legge Grant & Munroe LLP</i> | Michael A. Tanner (Ministry Observer and Liaison) <i>Ministry of Jobs, Tourism & Skills Training</i> |

Gregory G. Blue, Q.C. (senior staff lawyer, British Columbia Law Institute) is the project manager.

RATIONALES FOR REFORM

The *Employment Standards Act* provides a basic level of protection for workers against exploitation of the power imbalance intrinsic to the employer-employee relationship. The present Act originated in the 1970's as an amalgam of several separate pre-existing enactments relating to topics such as: hours of work, minimum wage, child labour prevention, and wage recovery. It remains closely tied to the model of the workplace that was the norm in the 1970's, namely one characterized by fixed working hours or shifts, an 8-hour day, 40-hour week, and highly regularized annual vacation and statutory holidays.

The 21st century workplace is considerably more various. The concept of the “workplace” itself has evolved significantly since the 1970's. Information technology and digital communications have revolutionized the working world. The workplace can no longer be standardized as a fixed locality where the employer exercises direct supervision and employees work in the presence of one another.

Greater flexibility in working arrangements is now often desired by employees and employers alike, but the Act is relatively restrictive unless a collective agreement is in place. The majority of workplaces in B.C. are not governed by collective agreements, however. Furthermore, “flexibility” can involve positive and negative connotations for both camps. It can denote both the ability of a workplace to accommodate circumstances of individual workers and the ability of an employer to circumvent standards relating to hours of work, holidays, leave, etc. Flexibility in working hours, where work is done, and patterns of remuneration can be simultaneously beneficial or detrimental to one or the other of the employer or employee, depending on how and why it is introduced. While the standards regime for non-unionized employment requires greater flexibility to meet 21st century circumstances, the legislation allowing for it must be very carefully structured to balance the interests of employers and individual workers.

Consultations conducted in 2010/2011 by the Ministry of Labour on employment standards revealed a few areas of agreement, but many areas of disagreement, between employers’ organizations and those representing the non-unionized workforce. The comprehensive review of the *Employment Standards Act* by BCLI with participation from both of these sectors will provide a neutral, non-political forum for discussion and an opportunity for emergence of a balanced model for employment standards going forward into the 21st century.

This project will also serve the most basic economic interests of all employers and workers in B.C.. As such, it has the potential to strengthen the social fabric of the province to a degree that hardly any other project of law reform could approach.

GOALS OF THE PROJECT

By the conclusion of the project, BCLI will have:

- (a) carried out a thorough analysis of the *Employment Standards Act* and its regulations in light of the current realities of the workplace in B.C. and the foreseeable future evolution of employment;
- (b) published a consultation paper to collect input from the public on issues and problems in the area of employment standards and proposed ways of addressing them;
- (c) with the aid of the Project Committee, identified the changes to the *Employment Standards Act* that are needed or desirable to address contemporary and foreseeable future circumstances and conditions;
- (d) formulated concrete recommendations for amendment or replacement of the current *Employment Standards Act*; and
- (e) published a detailed report on its examination of the *Employment Standards Act* and recommendations for its reform.

NEXT STEPS IN THE PROJECT

The project will consist of the following three distinct phases:

- a research-and-deliberation phase, during which the project committee will meet regularly to consider the *Employment Standards Act* in the areas it has chosen to study and the options for reform of the law;
- a consultation phase, beginning with the publication of the project committee's consultation paper that will survey the current law, discuss options for reform, and present the project committee's tentative recommendations for public input. During this consultation period, the public will have the opportunity to comment on the project committee's tentative recommendations; and
- a drafting phase, during which the project committee will be engaged in considering the responses to its consultation paper and drafting the recommendations for its final report.

ABOUT THE BRITISH COLUMBIA LAW INSTITUTE

The British Columbia Law Institute was incorporated in 1997 under the *British Columbia Society Act*. Its mission is to be a leader in law reform by carrying out the best in scholarly law-reform research and writing and the best in outreach relating to law reform.

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