

# LABOUR RELATIONS CODE

## [RSBC 1996] CHAPTER 244

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## Part 1 — Introductory Provisions

### Definitions

1 (1) In this Code:

**"associate chair"** means the associate chair of that division of the board appropriate to the context;

**"bargaining agent"** means

(a) a trade union certified by the board as an agent to bargain collectively for an appropriate bargaining unit, or

(b) a person, or an employers' organization accredited by the board, authorized by an employer to bargain collectively on the employer's behalf;

**"board"** means the Labour Relations Board and if applicable includes the chair, an associate chair, a division of the board and a panel established under section 117;

**"chair"** means the chair of the Labour Relations Board appointed under this Code;

**"collective agreement"** means a written agreement between an employer, or an employers' organization authorized by the employer, and a trade union, providing for rates of pay, hours of work or other conditions of employment, which may include compensation to a dependent contractor for furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing;

**"collective bargaining"** means negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision, or to the regulation of relations between an employer and employees;

**"council of trade unions"** includes an allied council, a trades council, a joint board or another association of trade unions;

**"day"** means a calendar day;

**"dependent contractor"** means a person, whether or not employed by a contract of employment or furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;

**"dispute"** means a difference or apprehended difference between an employer or group of employers, and one or more of his or her or their employees or a trade union, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done;

**"employee"** means a person employed by an employer, and includes a dependent contractor, but does not include a person who, in the board's opinion,

- (a) performs the functions of a manager or superintendent, or
- (b) is employed in a confidential capacity in matters relating to labour relations or personnel;

**"employer"** means a person who employs one or more employees or uses the services of one or more dependent contractors and includes an employers' organization;

**"employers' organization"** means an organization of employers in British Columbia that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining;

**"lockout"** includes closing a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his or her employees, done to compel his or her employees or to aid another employer to compel his or her employees to agree to conditions of employment;

**"party"** means a person bound by a collective agreement or involved in a dispute;

**"person"** includes an employee, an employer, an employers' organization, a trade union and council of trade unions, but does not include a person in respect of whom collective bargaining is regulated by the *Canada Labour Code*;

**"picket" or "picketing"** means attending at or near a person's place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to

- (a) enter that place of business, operations or employment,
- (b) deal in or handle that person's products, or
- (c) do business with that person,

and a similar act at such a place that has an equivalent purpose;

[Note: Definition of "picketing" declared to be of no force or effect by the Supreme Court of Canada. S

**"special officer"** means a special officer appointed under section 106;

**"strike"** includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services, but does not include

(a) a cessation of work permitted under section 63 (3), or

(b) a cessation, refusal, omission or act of an employee that occurs as the direct result of and for no other reason than picketing that is permitted by or under this Code,

and **"to strike"** has a similar meaning;

**"trade 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 employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer;

**"unit"** means an employee or a group of employees, and the expression **"appropriate for collective bargaining"** or **"appropriate bargaining unit"**, with reference to a unit, means a unit determined by the board to be appropriate for collective bargaining, whether it is an employer unit, craft unit, technical unit, plant unit or another unit, and whether or not the employees in it are employed by one or more employers.

(2) A person does not cease to be an employee within the meaning of this Code by reason only of ceasing to work as a result of

(a) a strike that is not contrary to this Code,

(b) a dismissal that is contrary to this Code, or

(c) a lockout.

#### **Duties under this Code**

**2** The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that

(a) recognizes the rights and obligations of employees, employers and trade unions under this Code,

- (b) fosters the employment of workers in economically viable businesses,
- (c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
- (d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
- (e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
- (f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
- (g) ensures that the public interest is protected during labour disputes, and
- (h) encourages the use of mediation as a dispute resolution mechanism.

#### **Continuing review of the Code**

**3** (1) The minister may appoint a committee of special advisors to undertake a continuing review of this Code and labour management relations and, without limitation, to

- (a) provide the minister with an annual evaluation of the manner in which the legislation is functioning and to identify problems that may have arisen under its provisions,
- (b) make recommendations concerning the need for amendments to the legislation, and
- (c) make recommendations on any specific matter referred to the committee by the minister.

(2) The minister may make regulations considered necessary or advisable respecting the receipt and dissemination of submissions and recommendations under subsection (1).

## **Part 2 — Rights, Duties and Unfair Labour Practices**

#### **Rights of employers and employees**

**4** (1) Every employee is free to be a member of a trade union and to participate in its lawful activities.

(2) Every employer is free to be a member of an employers' organization and to participate in its lawful activities.

**Prohibition against dismissals, etc., for exercising employee rights**

**5** (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person,
- (b) threaten dismissal of or otherwise threaten a person,
- (c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a trade union, or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Code or because the person has made or is about to make a disclosure that may be required of the person in a proceeding under this Code or because the person has made an application, filed a complaint or otherwise exercised a right conferred by or under this Code or because the person has participated or is about to participate in a proceeding under this Code.

(2) If no collective agreement respecting a unit is in force and a complaint is filed with the board alleging that an employee in that unit has been discharged, suspended, transferred or laid off from employment or otherwise disciplined in contravention of this Code, the board must forthwith inquire into the matter and, if the complaint is not settled or withdrawn, the board must

- (a) commence a hearing on the complaint within 3 days of its filing,
- (b) promptly proceed with the hearing without interruption, except for any necessary adjournments, and
- (c) render a decision on the complaint within 2 days of the completion of the hearing.

**Unfair labour practices**

**6** (1) Except as otherwise provided in section 8, an employer or a person acting on behalf of an employer must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it.

(2) Despite this section, an employer may permit an employee or representative of a trade union to confer with the employer during working hours or to attend to the

trade union's business during working hours without deducting time so occupied in computing the time worked for the employer and without deducting wages for that time.

(3) An employer or a person acting on behalf of an employer must not

(a) discharge, suspend, transfer, lay off or otherwise discipline an employee, refuse to employ or to continue to employ a person or discriminate against a person in regard to employment or a condition of employment because the person

(i) is or proposes to become or seeks to induce another person to become a member or officer of a trade union, or

(ii) participates in the promotion, formation or administration of a trade union,

(b) discharge, suspend, transfer, lay off or otherwise discipline an employee except for proper cause when a trade union is in the process of conducting a certification campaign for employees of that employer,

(c) impose in a contract of employment a condition that seeks to restrain an employee from exercising his or her rights under this Code,

(d) seek by intimidation, by dismissal, by threat of dismissal or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms or conditions of employment, to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union,

(e) use or authorize or permit the use of the services of a person in contravention of section 68, or

(f) refuse to agree with a trade union, certified under this Code as the bargaining agent for his or her employees who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 17, will pay union dues from time to time to the trade union.

(4) Despite subsection (3), except as expressly provided, this Code must not be interpreted to limit or otherwise affect the right of the employer to

(a) discharge, suspend, transfer, lay off or otherwise discipline an employee for proper cause, or

(b) make a change in the operation of the employer's business reasonably necessary for the proper conduct of that business.

#### **Limitation on activities of trade unions**

7 (1) Except with the employer's consent, a trade union or person acting on its behalf must not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.

(2) If employees reside on their employer's property or on property to which the employer or another person has the right to control access or entry, the employer or other person must on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union and, if the trade union acquires bargaining rights, after that to enter the property to conduct business of the trade union.

(3) If directed by the board and on request by the trade union representative, the employer must provide the representative with food and lodging at the current price and of a similar kind and quality as that provided to the employees.

#### **Right to communicate**

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

#### **Coercion and intimidation prohibited**

9 A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

#### **Internal union affairs**

10 (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to

- (a) matters in the constitution of the trade union,
- (b) the person's membership in a trade union, or
- (c) discipline by a trade union.

(2) A trade union must not expel, suspend or impose a penalty on a member or refuse membership in the trade union to a person, or impose any penalty or make

any special levy on a person as a condition of admission to membership in the trade union or council of trade unions

- (a) if in doing so the trade union acts in a discriminatory manner, or
- (b) because that member or person has refused or failed to participate in activity prohibited by this Code.

(3) If a trade union charges, levies or prescribes different initiation fees, dues or assessments in respect of a person according to whether the person applies or has applied for membership in the trade union before or after an application for certification by the trade union to represent the person as bargaining agent, the fees, dues or assessments are deemed to be discriminatory for the purpose of subsection (2) (a).

#### **Requirement to bargain in good faith**

**11** (1) A trade union or employer must not fail or refuse to bargain collectively in good faith in British Columbia and to make every reasonable effort to conclude a collective agreement.

(2) If a trade union and the employer have concluded a collective agreement outside British Columbia, it is invalid in British Columbia until a majority of the employees in British Columbia covered by the agreement ratify it.

#### **Duty of fair representation**

**12** (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith

- (a) in representing any of the employees in an appropriate bargaining unit, or
- (b) in the referral of persons to employment

whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

(2) It is not a violation of subsection (1) for a trade union to enter into an agreement under which

- (a) an employer is permitted to hire by name certain trade union members,
- (b) a hiring preference is provided to trade union members resident in a particular geographic area, or
- (c) an employer is permitted to hire by name persons to be engaged to perform supervisory duties.

(3) An employers' organization must not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers in the group appropriate for collective bargaining.

#### **Procedure for fair representation complaint**

**13** (1) If a written complaint is made to the board that a trade union, council of trade unions or employers' organization has contravened section 12, the following procedure must be followed:

(a) a panel of the board must determine whether or not it considers that the complaint discloses a case that the contravention has apparently occurred;

(b) if the panel considers that the complaint discloses sufficient evidence that the contravention has apparently occurred, it must

(i) serve a notice of the complaint on the trade union, council of trade unions or employers' organization against which the complaint is made and invite a reply to the complaint from the trade union, council of trade unions or employers' organization, and

(ii) dismiss the complaint or refer it to the board for a hearing.

(2) If the board is satisfied that the trade union, council of trade unions or employers' organization contravened section 12, the board may make an order or direction referred to in section 14 (4) (a), (b) or (d).

#### **Inquiry into unfair labour practice**

**14** (1) If a written complaint is made to the board that any person is committing an act prohibited by section 5, 6, 7, 9, 10, 11 or 12, the board must serve a notice of the complaint on the person against whom it is made and on any other person affected by it.

(2) The board may appoint an officer to inquire into the complaint and attempt to settle the matter complained of, and the officer must report the results of his or her inquiry and endeavours to the board.

(3) If an appointment is not made under subsection (2), or the officer is unable to settle the matter, the board may inquire into the complaint.

(4) If, on inquiry, the board is satisfied that any person is doing, or has done, an act prohibited by section 5, 6, 7, 9, 10, 11 or 12, it may

(a) make an order directing the person to cease doing the act,

(b) in the same or a subsequent order, direct any person to rectify the act,

(c) in the case of an employer, include a direction to reinstate and pay an employee a sum equal to wages lost due to his or her discharge, suspension, transfer, layoff or other disciplinary action contrary to section 6 (3) (a) or (b),

(d) in the case of a trade union, include a direction to reinstate a person to membership in the trade union and pay to that person

(i) a sum equal to wages lost due to his or her expulsion or suspension contrary to section 10, and

(ii) the amount of any penalty, levy, fee, dues or assessment imposed on him or her contrary to section 10,

(e) in the same or a subsequent order, direct the employer not to increase or decrease wages, or alter a term or condition of employment of the employees affected by the order for a period not exceeding 30 days without written permission of the board, and the board may extend this order for a further period not exceeding 30 days, and

(f) despite section 25 (3), if the employees affected by the order are seeking trade union representation and the board is of the opinion that the union would likely have obtained the requisite support had it not been for the act prohibited by section 5, 6, 7, 9, 10, 11 or 12, certify the trade union.

(5) The board may impose conditions it considers necessary or advisable on a trade union that is certified under subsection (4) (f), and if the conditions are not substantially fulfilled to the board's satisfaction within 12 months from the date of the certification, or in a lesser period ordered by the board, the certification is deemed to be cancelled.

(6) If in the board's opinion a complaint under subsection (1) is without merit, it may reject the complaint at any time.

(7) On an inquiry by the board into a complaint under section 6 (3) (a) or (b), the burden of proof that the employer did not contravene paragraph (a) or (b) lies on the employer.

#### **Collective agreement may provide for union membership**

**15** (1) Nothing in this Code is to be construed as precluding the parties to a collective agreement from inserting in it, or carrying out, a provision

(a) requiring membership in a specified trade union as a condition of employment, or

(b) granting preference in employment to members of a specified trade union.

(2) Despite subsection (1), a trade union or person acting on its behalf must not require an employer to terminate the employment of an employee due to his or her expulsion or suspension from that trade union on the ground that he or she is or was a member of another trade union.

#### **Assignment of fees and dues**

**16** (1) An employer must honour an employee's written assignment of wages to a trade union certified as the bargaining agent for his or her employees under this Code, unless the assignment is declared null and void by the board, or is revoked by the assignor.

(2) The assignment must be substantially in the following form:

To *[name of employer]*.

Until this authority is revoked by me in writing, I authorize you to deduct from my wages and to pay to *[name of the trade union]* fees and dues in the amounts following:

(1) Initiation fees in the amount \$ \_\_\_\_\_;

(2) Dues of \$ \_\_\_\_\_ per \_\_\_\_\_;

(3) Dues of \_\_\_\_\_% of hourly, weekly or monthly wages.

(3) Unless an assignor of wages revokes the assignment by written notice to the employer, or the board declares an assignment to be null and void, the employer must remit at least once each month to the trade union certified under this Code and named in the assignment the fees and dues deducted, with a written statement containing the names of the employees for whom deductions were made and the amount of each deduction.

(4) If an assignment is revoked, the employer must give a copy of the revocation to the assignee.

(5) Despite subsections (1), (2) and (3), the employer has no financial responsibility for the fees or dues of an employee, unless the employer owes the employee sufficient unpaid wages to pay the fees and dues assigned.

#### **Religious objections**

**17** (1) If the board is satisfied that an employee, because of his or her religious conviction or belief

(a) objects to joining trade unions generally, or

(b) objects to the paying of dues or other assessments to trade unions generally

the board may order that the provisions of a collective agreement of the type referred to in section 15 do not apply to the employee and that the employee is not required to join a trade union, to be or continue to be a member of a trade union, or to pay any dues, fees or assessments to the trade union, if amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) that may be designated by the board.

(2) Despite any other provision of this Code, a person exempted under subsection (1) is not entitled to participate in a vote conducted by a trade union or in a vote held for the purposes of this Code.

### **Part 3 — Acquisition and Termination of Bargaining Rights**

#### **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.

#### **Section 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.

#### **Section 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.

## **Part 4 — Collective Bargaining Procedures**

### **Division 1 — General**

#### **Notice to bargain collectively**

**45** (1) When the board certifies a trade union as the bargaining agent for employees in a unit and a collective agreement is not in force,

(a) the trade union may by written notice require the employer to commence collective bargaining, or the employer may by written notice require the trade union to commence collective bargaining, and

(b) the employer must not increase or decrease the rate of pay of an employee in the unit or alter another term or condition of employment until

(i) 4 months after the board certifies the trade union as bargaining agent for the unit, or

(ii) a collective agreement is executed,

whichever occurs first.

(2) If notice to commence collective bargaining has been given and the term of a collective agreement that was in force between the parties has expired, the employer or the trade union must not, except with the consent of the other, alter any term or condition of employment, until

(a) a strike or lockout has commenced,

(b) a new collective agreement has been negotiated, or

(c) the right of the trade union to represent the employees in the bargaining unit has been terminated,

whichever occurs first.

(3) Despite subsection (1), the board, after notice to the trade union, may

(a) authorize an employer to increase or decrease the rate of pay of an employee in the unit, or alter a term or condition of employment, and

(b) specify conditions to be observed by an employer so authorized.

(4) 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.

#### **Notice before expiry of agreement**

**46** (1) Either party to a collective agreement, whether entered into before or after the coming into force of this Code, may at any time within 4 months immediately preceding the expiry of the agreement, by written notice require the other party to commence collective bargaining.

(2) A copy of the notice given under section 45 and the notice with the endorsement referred to in this section must be sent by registered mail to the associate chair of the Mediation Division within 3 days after notice is given under subsection (1) of this section.

(3) The endorsement must state where, when and to whom the original notice was given.

(4) If a notice is not given under subsection (1) by either party 90 days or more before the expiry of the agreement, both parties are deemed to have given notice under this section 90 days before the expiry.

#### **Collective bargaining**

**47** If notice to commence collective bargaining has been given

(a) under section 45, the trade union and the employer, or

(b) under section 46, the parties to the collective agreement

must, within 10 days after the date of the notice, commence to bargain collectively in good faith, and make every reasonable effort to conclude a collective agreement or a renewal or revision of it.

#### **Parties bound by collective agreement**

**48** A collective agreement is binding on

(a) a trade union that has entered into it or on whose behalf a council of trade unions has entered into it, and every employee of an employer who has entered into it and who is included in or affected by the agreement, and

(b) an employer who has entered into it and on whose behalf an employers' organization authorized by that employer has entered into it.

#### **Terms of collective agreement to be carried out**

**49** (1) A person bound by a collective agreement, whether entered into before or after the coming into force of this Code, must

(a) do everything the person is required to do, and

(b) refrain from doing anything the person is required to refrain from doing

by the provisions of the collective agreement.

(2) A failure to meet a requirement of subsection (1) is a contravention of this Code.

(3) If an agreement is reached as the result of collective bargaining, both parties must execute it.

(4) Nothing in this section requires or authorizes a person to do anything that conflicts with a requirement of or under this Code.

(5) If there is any conflict between a provision of a collective agreement and a requirement of or under this Code, the requirement of or under this Code prevails.

#### **Agreement for less than one year**

**50** (1) Despite anything contained in it, a collective agreement, whether entered into before or after the coming into force of this Code, must, if for a term of less than one year, be deemed to be for a term of one year from the date it came or comes into operation, and must not, except with the minister's consent be terminated by the parties within a period of one year from that date.

(2) Subject to subsection (4), if a collective agreement is for a term of more than one year, either party may at any time after the agreement has been in operation for 8 months apply to the minister for leave to notify the other party that the agreement will be terminated on its next anniversary date.

(3) If the minister consents to the application under subsection (2) and the notice to terminate is served on the other party at least 3 months before the date on which the agreement is to be terminated, the agreement is terminated on that date.

(4) At the time of making a collective agreement for more than a year, the parties may, in the agreement, specifically exclude the operation of subsections (2) and (3), and in that event subsections (2) and (3) do not apply to the agreement.

#### **Copies of collective agreements to be filed**

**51** Each of the parties to a collective agreement must, within 30 days after its execution, file a copy of it with the board.

#### **Extrajurisdictional companies**

**52** (1) An extrajurisdictional company for which a trade union has been certified as bargaining agent for a unit of employees of that company must, within 5 days of the certification, appoint a person resident in British Columbia with authority to bargain collectively to

- (a) conclude a collective agreement with the trade union, and
- (b) sign the agreement on behalf of the company.

(2) A collective agreement signed by a person appointed under subsection (1) is binding on the company.

(3) If the minister believes that no appointment has been made as required by subsection (1), the minister may make the appointment and notify the company and the trade union, and that appointment is as binding on the company as if the person were appointed by the company.

### **Division 2 — Joint Consultation and Adjustment Plans**

#### **Joint consultation**

**53** (1) A collective agreement must contain a provision requiring a consultation committee to be established if a party makes a written request for one after the notice to commence collective bargaining is given or after the parties begin collective bargaining.

(2) The consultation committee provision must provide that the parties consult regularly during the term of the agreement about issues relating to the workplace that affect the parties or any employee bound by the agreement.

(3) If the collective agreement does not contain the provisions described in subsections (1) and (2), it is deemed to contain the following consultation committee provision:

On the request of either party, the parties must meet at least once every 2 months until this agreement is terminated, for the purpose of discussing

issues relating to the workplace that affect the parties or any employee bound by this agreement.

(4) The purpose of the consultation committee is to promote the cooperative resolution of workplace issues, to respond and adapt to changes in the economy, to foster the development of work related skills and to promote workplace productivity.

(5) The associate chair of the Mediation Division must on the joint request of the parties appoint a facilitator to assist in developing a more cooperative relationship between the parties.

#### **Adjustment plan**

**54** (1) If an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,

(a) the employer must give notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and

(b) after notice has been given, the employer and trade union must meet, in good faith, and endeavour to develop an adjustment plan, which may include provisions respecting any of the following:

(i) consideration of alternatives to the proposed measure, policy, practice or change, including amendment of provisions in the collective agreement;

(ii) human resource planning and employee counselling and retraining;

(iii) notice of termination;

(iv) severance pay;

(v) entitlement to pension and other benefits including early retirement benefits;

(vi) a bipartite process for overseeing the implementation of the adjustment plan.

(2) If, after meeting in accordance with subsection (1), the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.

(3) Subsections (1) and (2) do not apply to the termination of the employment of employees exempted by section 65 of the *Employment Standards Act* from the application of section 64 of that Act.

### **Division 3 — First Collective Agreement**

#### **First collective agreement**

**55** (1) Either party may apply to the associate chair of the Mediation Division for the appointment of a mediator to assist the parties in negotiating a first collective agreement, if

(a) a trade union certified as bargaining agent and an employer have bargained collectively to conclude their first collective agreement and have failed to do so, and

(b) the trade union has taken a strike vote under section 60 and the majority of those employees who vote have voted for a strike.

(2) If an application is made under subsection (1) an employee must not strike or continue to strike, and the employer must not lock out or continue to lock out, unless a strike or lockout is subsequently authorized under subsection (6) (b) (iii).

(3) The associate chair must appoint a mediator within 5 days of receiving an application under subsection (1).

(4) An application under subsection (1) must include a list of the disputed issues and the position of the party making the application on those issues.

(5) Within 5 days of receiving the information referred to in subsection (4), the other party must give to the party making the application and to the associate chair a list of the disputed issues and the position of that party on those issues.

(6) If the first collective agreement is not concluded within 20 days of the appointment of the mediator, the mediator must report to the associate chair and recommend either or both of the following:

(a) the terms of the first collective agreement for consideration by the parties;

(b) a process for concluding the first collective agreement including one or more of the following:

(i) further mediation by a person empowered to arbitrate any issues not resolved by agreement and to conclude the terms of the first collective agreement;

(ii) arbitration by a single arbitrator or by the board, to conclude the terms of the first collective agreement;

(iii) allowing the parties to exercise their rights under this Code to strike or lock out.

(7) If the parties do not accept the mediator's recommended terms of settlement or if a first collective agreement is not concluded within 20 days of the report under subsection (6), the associate chair must direct a method set out in subsection (6) (b) for resolving the dispute.

(8) If the associate chair directs a method set out in subsection (6) (b) (i) or (ii), the parties must refrain from or cease any strike or lockout activity, and the terms of the collective agreement recommended or concluded under that subsection are binding on the parties.

## **Part 4.1**

### **Sections Repealed**

**55.1 to 55.26** [Repealed 2001-33-10.]

## **Part 5 — Strikes, Lockouts and Picketing**

### **Definition**

**56** In this Part, "**perishable property**" includes property that

(a) is imminently subject to spoilage, or

(b) may imminently become dangerous to life, health or other property.

### **Strikes and lockouts prohibited during term of collective agreement**

**57** (1) An employee bound by a collective agreement entered into before or after the coming into force of this Code must not strike during the term of the collective agreement, and a person must not declare or authorize a strike of those employees during that term.

(2) An employer bound by a collective agreement entered into before or after the coming into force of this Code must not during the term of the collective agreement lock out an employee bound by the collective agreement.

### **Honouring of agreement**

**58** Every collective agreement must provide that there will be no strikes or lockouts so long as the agreement continues to operate and, if a collective agreement does not contain such a provision, it is deemed to contain the following provision:

There must be no strikes or lockouts so long as this agreement continues to operate.

**Strikes and lockouts prohibited before bargaining and vote**

**59** (1) A person must not take a vote under section 60 or 61 on the question of whether to strike or on the question of whether to lock out until the trade union and the employer or their authorized representatives have bargained collectively in accordance with this Code.

(2) A trade union must not declare or authorize a strike and an employer must not declare or cause a lockout, until

(a) in the case of a trade union or an employee in the unit affected, either

(i) section 60 has been complied with, or

(ii) a lawful lockout has occurred and has not been discontinued for a period longer than 72 hours, or

(b) in the case of an employer, either

(i) section 61 has been complied with, or

(ii) a lawful strike has occurred and has not been discontinued for a period longer than 72 hours.

**Pre-strike vote and notice**

**60** (1) A person must not declare or authorize a strike and an employee must not strike until a vote as to whether to strike has been taken in accordance with the regulations by the employees in the unit affected, and the majority of those employees who vote have voted for a strike.

(2) If on application by a person directly affected by a strike vote or an impending strike, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1), the board may make an order declaring the vote of no force or effect and directing that if another vote is conducted, the vote must be taken on the terms the board considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected, if the vote favours a strike,

(a) a person must not declare or authorize a strike, and an employee must not strike, except during the 3 months immediately following the date of the vote, and

(b) an employee must not strike unless

(i) the employer has been served with written notice by the trade union that the employees are going on strike,

(ii) written notice has been filed with the board,

(iii) 72 hours or a longer period directed under this section has elapsed from the time written notice was

(A) filed with the board, and

(B) served on the employer, and

(iv) if a mediation officer has been appointed under section 74, 48 hours have elapsed from the time the trade union is informed by the associate chair that the mediation officer has reported to him or her, or from the time required under subparagraph (iii) of this paragraph, whichever is longer.

(4) Despite subsection (3) (b) (iii), the board may direct a trade union to give more than 72 hours' notice of a strike, on application or on its own motion, for the protection of

(a) perishable property, or

(b) other property or persons affected by perishable property.

(5) When the board makes a direction under subsection (4), the board

(a) must specify the length of the written notice required, and

(b) may specify terms it considers necessary or advisable.

(6) If facilities, productions or services have been designated as essential services under Part 6 and a strike that affects those facilities, productions or services does not occur on the expiry of the 72 hour period referred to in subsection (3) (b) (iii) or the longer period specified under subsection (5), the trade union must give to the employer and to the board a new strike notice of at least 72 hours before commencing a strike.

#### **Pre-lockout vote and notice**

**61** (1) If 2 or more employers are engaged in the same dispute with their employees, a person must not declare or authorize a lockout and an employer must not lock out his or her employees until a vote as to whether to lock out has been taken by all the employers in accordance with the regulations, and a majority of those employers who vote have voted for a lockout.

(2) If on application by a person directly affected by a lockout vote or an impending lockout, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1) or the regulations, the board may make an order declaring the vote of no force or effect and directing that if another vote is conducted the vote must be taken on the terms the board considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected,

(a) if a vote is taken under subsection (1) and the vote favours a lockout, a person must not declare or authorize a lockout and an employer must not lock out his or her employees except during the 3 months immediately following the date of the vote, and

(b) an employer must not lock out his or her employees unless

(i) the trade union has been served with written notice by the employer that the employer is going to lock out his or her employees,

(ii) written notice has been filed with the board,

(iii) 72 hours or a longer period directed under this section has elapsed from the time written notice was

(A) filed with the board, and

(B) served on the trade union, and

(iv) if a mediation officer has been appointed under section 74, 48 hours have elapsed from the time the employers are informed by the associate chair that the mediation officer has reported to him or her, or from the time required under subparagraph (iii) of this paragraph, whichever is longer.

(4) Despite subsection (3) (b) (iii), the board may direct an employer to give more than 72 hours' notice of a lockout, on application or on its own motion, for the protection of

- (a) perishable property, or
  - (b) other property or persons affected by perishable property.
- (5) If the board makes a direction under subsection (4), the board
- (a) must specify the length of the written notice required, and
  - (b) may specify terms it considers necessary or advisable.
- (6) If facilities, productions or services have been designated as essential services under Part 6 and a lockout that affects those facilities, productions or services does not occur on the expiry of the 72 hour period referred to in subsection (3) (b) (iii) or the longer period specified under subsection (5), the employer must give to the board and the trade union a new lockout notice of at least 72 hours before commencing a lockout.

#### **Continuation of benefits**

- 62** (1) If employees are lawfully on strike or lawfully locked out, their health and welfare benefits, other than pension benefits or contributions, normally provided directly or indirectly by the employer to the employees must be continued if the trade union tenders payment to the employer or to any person who was before the strike or lockout obligated to receive the payment
- (a) in an amount sufficient to continue the employees' entitlement to the benefits, and
  - (b) on or before the regular due date of that payment.
- (2) If subsection (1) is complied with
- (a) the employer or other person referred to in that subsection must accept the payment tendered by the trade union, and
  - (b) a person must not deny to an employee a benefit described in that subsection, including coverage under an insurance plan, for which the employee would otherwise be eligible, because the employee is participating in a lawful strike or is lawfully locked out.
- (3) A trade union and an employer may agree in writing to specifically exclude the operation of this section.

#### **Rights preserved**

**63** (1) This Code must not be construed to prohibit the suspension or discontinuance by an employer of operations in the employer's establishment, in whole or in part, for a cause not constituting a lockout.

(2) The burden of proof that operations in his or her establishment are or were suspended or discontinued for a cause not constituting a lockout is on the employer.

(3) An act or omission by a trade union or by the employees does not constitute a strike if

(a) it is required for the safety or health of those employees, or

(b) it is permitted under a provision of a collective agreement by which an employer agrees that employees within the bargaining unit covered by the collective agreement are not required to work in association with persons who are not members of

(i) the trade union representing the bargaining unit, or

(ii) another trade union contemplated by the collective agreement.

#### **Information**

**64** A trade union or other person may, at any time and in a manner that does not constitute picketing as defined in this Code, communicate information to a person, or publicly express sympathy or support for a person, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by that person.

#### **Picketing**

**65** (1) In this section:

**"ally"** means a person who, in the board's opinion, in combination, in concert or in accordance with a common understanding with an employer assists the employer in a lockout or in resisting a lawful strike;

**"common site picketing"** means picketing at or near a site or place where

(a) 2 or more employers carry on operations, employment or business, and

(b) there is a lockout or lawful strike by or against one of the employers referred to in paragraph (a), or one of them is an ally of an employer by or against whom there is a lockout or lawful strike.

(2) A person who, for the benefit of a struck employer, or for the benefit of an employer who has locked out, performs work, supplies goods or furnishes services

of a nature or kind that, except for a lockout or lawful strike, would be performed, supplied or furnished by the employer, must be presumed by the board to be the employer's ally unless he or she proves the contrary.

(3) A trade union, a member or members of which are lawfully on strike or locked out, or a person authorized by the trade union, may picket at or near a site or place where a member of the trade union performs work under the control or direction of the employer if the work is an integral and substantial part of the employer's operation and the site or place is a site or place of the lawful strike or lockout.

(4) The board may, on application and after making the inquiries it requires, permit picketing

(a) at or near another site or place that the employer causing a lockout or whose employees are lawfully on strike is using to perform work, supply goods or furnish services for the employer's own benefit that, except for the lockout or strike, would be performed, supplied or furnished at the site or place where picketing is permitted by subsection (3), or

(b) at or near the place where an ally performs work, supplies goods or furnishes services for the benefit of a struck employer, or for the benefit of an employer who has locked out,

but the board must not permit common site picketing unless it also makes an order under subsection (6) defining the site or place and restricting the picketing in the manner referred to in that subsection.

(5) In subsection (4), "**employer**" means the person whose operation may be lawfully picketed under subsection (3).

(6) The board may, on application or on its own motion, make an order defining the site or place at which picketing that is permitted by subsection (3), or that is permitted under subsection (4), may take place.

(7) If the picketing referred to in subsection (6) is common site picketing, the board must restrict the picketing in such a manner that it affects only the operation of the employer causing the lockout or whose employees are lawfully on strike, or an operation of an ally of that employer, unless it is not possible to do so without prohibiting picketing that is permitted by subsection (3) or (4), in which case the board may regulate the picketing as it considers appropriate.

(8) For the purpose of this section, divisions or other parts of a corporation or firm, if they are separate and distinct operations, must be treated as separate employers.

## **Actions**

**66** No action or proceeding may be brought for

- (a) petty trespass to land to which a member of the public ordinarily has access,
- (b) interference with contractual relations, or
- (c) interference with the trade, business or employment of another person resulting in a reduction in trade or business, impairment of business opportunity or other economic loss

arising out of strikes, lockouts or picketing permitted under this Code or attempts to persuade employees to join a trade union made at or near but outside entrances and exits to an employer's workplace.

#### **Picketing restricted**

**67** Except as provided in this Code, a person must not picket in respect of a matter or dispute to which this Code applies.

#### **Replacement workers**

**68** (1) During a lockout or strike authorized by this Code an employer must not use the services of a person, whether paid or not,

- (a) who is hired or engaged after the earlier of the date on which the notice to commence collective bargaining is given and the date on which bargaining begins,
- (b) who ordinarily works at another of the employer's places of operations,
- (c) who is transferred to a place of operations in respect of which the strike or lockout is taking place, if he or she was transferred after the earlier of the date on which the notice to commence bargaining is given and the date on which bargaining begins, or
- (d) who is employed, engaged or supplied to the employer by another person,

to perform

- (e) the work of an employee in the bargaining unit that is on strike or locked out, or
- (f) the work ordinarily done by a person who is performing the work of an employee in the bargaining unit that is on strike or locked out.

(2) An employer must not require any person who works at a place of operations in respect of which the strike or lockout is taking place to perform any work of an employee in the bargaining unit that is on strike or is locked out without the consent of the person.

(3) An employer must not

- (a) refuse to employ or continue to employ a person,
- (b) threaten to dismiss a person or otherwise threaten a person,
- (c) discriminate against a person in regard to employment or a term or condition of employment, or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of the person's refusal to perform any or all of the work of an employee in the bargaining unit that is on strike or locked out.

**Other acts not actionable**

**69** An act done by 2 or more persons acting by agreement or combination, if done in contemplation or furtherance of a labour dispute, is not actionable unless it would be wrongful without an agreement or combination.

**Declaratory opinion**

**70** (1) If, on the complaint by an interested person, the board is satisfied that a declaration by or on behalf of a trade union or employer, or an agreement or combination between one or more employers and one or more trade unions, or 2 or more trade unions, is substantially affecting trade and commerce in a commodity or service or is substantially affecting the business, operations or purposes of the complainant, the board may, in its discretion, issue a declaratory opinion that

- (a) the declaration, agreement or combination is void for all purposes,
- (b) the declaration, agreement or combination is unenforceable in specified circumstances or for a specified period of time, or
- (c) the declaration, agreement or combination is valid and enforceable.

(2) When the board issues a declaratory opinion under subsection (1) (a) or (b), it may make orders or take steps it considers advisable to ensure that persons affected by the declaration, agreement or combination are informed of the terms of the declaratory opinion.

(3) The board, in determining whether to issue a declaratory opinion under subsection (1), must consider

- (a) the extent to which the employment, business, operations, purposes or property of the complainant have been affected by the declaration, agreement or combination, and

(b) the intent and purpose of this Part and the necessity for reasonable protection and advancement of a trade union or employer.

#### **Refusal of order**

**71** The board may refuse to make an order under Part 9 in respect of a matter arising under this Part if it believes it is just and equitable to do so in view of the improper conduct of the person applying for the order.

### **Part 6 — Essential Services**

#### **Essential services**

**72** (1) If a dispute arises after collective bargaining has commenced, the chair may, on the chair's own motion or on application by either of the parties to the dispute,

(a) investigate whether or not the dispute poses a threat to

(i) the health, safety or welfare of the residents of British Columbia, or

(ii) the provision of educational programs to students and eligible children under the *School Act*, and

(b) report the results of the investigation to the minister.

(2) If the minister

(a) after receiving a report of the chair respecting a dispute, or

(b) on the minister's own initiative

considers that a dispute poses a threat to the health, safety or welfare of the residents of British Columbia, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.

(2.1) If the minister

(a) after receiving a report of the chair respecting a dispute, or

(b) on the minister's own initiative

considers that a dispute poses a threat to the provision of educational programs to students and eligible children under the *School Act*, the minister may direct the board to designate as essential services those facilities, productions and services that

the board considers necessary or essential to prevent immediate and serious disruption to the provision of educational programs.

(3) When the minister makes a direction under subsection (2) or (2.1) the associate chair of the Mediation Division may appoint one or more mediators to assist the parties to reach an agreement on essential services designations.

(4) A mediator appointed under subsection (3) must report to the associate chair of the Mediation Division within 15 days of his or her appointment or within any additional period agreed on by the parties.

(5) The board

(a) must within 30 days of receiving the report of a mediator, designate facilities, productions and services as essential services under subsection (2) or (2.1), and

(b) may, in its discretion, incorporate any recommendations made by the mediator into the designation under that subsection.

(6) If the minister makes a direction under subsection (2) or (2.1) before a strike or lockout has commenced, the parties must not strike or lock out until the designation of essential services is made by the board.

(7) If the minister makes a direction under subsection (2) or (2.1) after a strike or lockout has commenced, the parties may continue the strike or lockout subject to any designation of essential services by the board.

(8) If the board designates facilities, productions and services as essential services, the employer and the trade union must supply, provide or maintain in full measure those facilities, productions and services and must not restrict or limit a facility, production or service so designated.

(9) A designation made under this section may be amended, varied or revoked and another made in its place, and despite section 135 the board may, in its discretion, on application or on its own motion, decline to file its order in a Supreme Court registry.

#### **Return to work**

**73** (1) Every employer, trade union or employee affected by a direction or designation made under section 72 with respect to the dispute must comply with the direction or designation.

(2) If a designation is made under section 72, the relationship between the employer and his or her employees, while the designation remains in effect, must be governed

by the terms and conditions of the collective agreement last in force between the employer and the trade union except as that collective agreement is amended by the board to the extent necessary to implement the designation of essential services.

(3) The board may under section 72 designate facilities, productions and services supplied, provided or maintained by employees of the employer who are represented by another trade union that is not involved in a collective bargaining dispute with the employer.

## **Part 7 — Mediation and Disputes Resolution**

### **Division 1 — Mediation and Fact Finding**

#### **Mediation officer and services**

74 (1) The associate chair of the Mediation Division may appoint a mediation officer if

(a) notice has been given to commence collective bargaining between a trade union and an employer,

(b) either party makes a written request to the associate chair to appoint a mediation officer to confer with the parties to assist them to conclude a collective agreement or a renewal or revision of it, and

(c) the request is accompanied by a statement of the matters the parties have or have not agreed on in the course of collective bargaining.

(2) A person appointed as a mediation officer need not be an employee of the board.

(3) The minister may at any time during the course of collective bargaining between an employer and a trade union, if he or she considers that the appointment is likely to facilitate the making of a collective agreement, appoint a mediation officer to confer with the parties.

(4) If a mediation officer is appointed to confer with the parties, the mediation officer must, no later than 10 days after first meeting with the parties or 20 days after the mediation officer's appointment, whichever is sooner, or such longer period as the parties agree on or as the minister directs, report to the associate chair setting out the matters on which the parties have or have not agreed and such other information as the mediation officer considers relevant to the collective bargaining between the parties.

(5) If either party so requests of the associate chair, or if the minister so directs, the mediation officer must provide to the associate chair and the parties a report

concerning the collective bargaining dispute, and the report may include recommended terms of settlement.

(6) Parties conferring with a mediation officer under this section must provide the information that the mediation officer requests concerning their collective bargaining.

#### **Notice of strike or lockout**

**75** (1) If a strike or lockout has commenced, the trade union or employer commencing the strike or lockout must immediately inform the chair in writing specifying the date the strike or lockout commenced.

(2) The chair must inform the minister of strikes and lockouts that occur or are threatened.

#### **Special mediator**

**76** (1) The minister may appoint a special mediator, and specify terms of reference for the special mediator, to assist the parties in settling the terms and conditions of a collective agreement or a renewal or revision of a collective agreement.

(2) The minister may terminate the appointment of a special mediator.

(3) The special mediator must keep the minister informed as to the progress of the mediation.

(4) The special mediator, in carrying out his or her duties under this Code, has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

#### **Fact finding**

**77** (1) The associate chair may appoint a fact finder in respect of a collective bargaining dispute, and the associate chair must give written notice of the appointment to each of the parties to the dispute.

(2) Within 7 days after receiving the notice of the appointment of the fact finder, each party must give written notice to the fact finder and the other party setting out all matters the parties have agreed on for inclusion in a collective agreement and all matters remaining in dispute between the parties.

(3) If a party fails to comply with subsection (2), the fact finder may make a determination of the matters mentioned in subsection (2).

(4) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report to the associate chair setting out the matters agreed on

by the parties for inclusion in a collective agreement and the matters remaining in dispute between the parties.

(5) The fact finder may include in his or her report his or her findings in respect of any matter that he or she considers relevant to the making of a collective agreement between the parties.

(6) The associate chair must provide a copy of the fact finder's report to the parties, and may make it public if the associate chair considers it advisable to do so.

#### **Last offer votes**

**78** (1) Before the commencement of a strike or lockout, the employer of the employees in the affected bargaining unit may request that a vote of those employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, and if the employer requests that a vote be taken, the associate chair must direct that a vote of those employees to accept or reject the offer be held in a manner the associate chair directs.

(2) Before the commencement of a strike or lockout, the trade union that is certified as the bargaining agent of the employees in the affected bargaining unit may, if more than one employer is represented in the dispute by an employers' organization, request that a vote of those employers be taken as to the acceptance or rejection of the offer of the trade union last received by the employers' organization in respect of all matters remaining in dispute between the parties, and if the trade union requests that a vote be taken, the associate chair must direct that a vote of those employers to accept or reject the offer be held in a manner the associate chair directs.

(3) If a vote under this section favours the acceptance of a final offer, an agreement is thereby constituted between the parties.

(4) The holding of a vote or a request for the taking of a vote under subsection (1) or (2) does not extend any time limits or periods referred to in section 60 or 61.

(5) Only one vote in respect of the same dispute may be held under subsection (1) and only one vote in respect of the same dispute may be held under subsection (2).

(6) If, during a strike or lockout, the minister considers that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the minister may direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith in a manner the minister directs.

(7) If, during a strike or lockout, more than one employer is represented in the dispute by an employers' organization and the minister considers that it is in the

public interest that the employers comprising the employers' organization be given the opportunity to accept or reject the offer of the bargaining agent for the employees last received by the employers' organization in respect of all matters remaining in dispute between the parties, the minister may direct that a vote of those employers to accept or reject the offer be held forthwith in a manner the minister directs.

## **Division 2 — Commissions and Councils**

### **Industrial inquiry commission**

**79** (1) The minister may, on application or on his or her own motion, make or cause to be made inquiries considered advisable respecting labour relations matters, and subject to this Code and regulations, may do the things he or she considers necessary to maintain or secure labour relations stability and promote conditions favourable to settlement of disputes.

(2) For any of the purposes of subsection (1), or if in an industry a dispute between employers and employees exists or is likely to arise, the minister may refer the matter to an industrial inquiry commission for investigation and report.

(3) An industrial inquiry commission consists of one or more members appointed by the minister.

(4) The minister must furnish the industrial inquiry commission with a statement of the matters to be inquired into, and if an inquiry involves particular persons or parties, must advise them of the appointment of the industrial inquiry commission.

(5) An industrial inquiry commission must inquire into the matters referred to it by the minister and endeavour to carry out its terms of reference, and if a settlement is not effected in the meantime, must report the result of its inquiries and its recommendations to the minister within 14 days after its appointment or within a further time the minister specifies.

(6) On receipt of a report of an industrial inquiry commission relating to a dispute between employers and employees, the minister must furnish a copy to each of the parties affected and must publish it in the manner considered advisable.

(7) The members of an industrial inquiry commission have the power and authority of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(8) If either before or after the report is made the parties agree in writing to accept the report in respect of the matters referred to the industrial inquiry commission, the parties are bound by the report in respect of those matters.

### **Industry advisory councils**

**80** The minister may, on application or on his or her own motion, establish industry advisory councils considered appropriate to examine labour management relations in those industries and recommend to the minister and other interested persons or groups measures that may contribute to the improvement of those relations, including measures to achieve more effective collective bargaining and procedures for settling disputes.

## **Part 8 — Arbitration Procedures**

### **Division 1 — Definitions and Purpose**

#### **Definitions**

**81** In this Part:

**"arbitration board"** includes

- (a) a single arbitrator, or
- (b) another tribunal or body appointed or constituted under this Part or a collective agreement;

**"arbitration bureau"** means the Collective Agreement Arbitration Bureau continued under this Part;

**"director"** means the director of the arbitration bureau;

**"issue"** means, in respect of an award, to make and publish the award to the parties to the arbitration;

**"settlement officer"** means an employee appointed under the *Public Service Act* who is appointed as a settlement officer by the director.

#### **Purpose of Part**

**82** (1) It is the purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.

(2) An arbitration board, to further the purpose expressed in subsection (1), must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and must apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

### **Division 2 — Collective Agreement Arbitration Bureau**

## **Collective Agreement Arbitration Bureau**

**83** (1) The Collective Agreement Arbitration Bureau is continued consisting of a director designated by the chair and other employees of the board designated by the director.

(2) The director must establish and maintain a register of arbitrators.

(3) The minister must appoint a joint advisory committee consisting of

(a) 2 persons representative of trade unions,

(b) 2 persons representative of employers,

(c) 2 persons representative of arbitrators, and

(d) the director, who is the chair of the committee.

(4) The joint advisory committee must advise the director on

(a) the training and education of labour arbitrators and settlement officers,

(b) research and publication of information concerning labour arbitrations, and

(c) the establishment and maintenance of a register of arbitrators.

## **Division 3 — Collective Agreement Provisions**

### **Dismissal or arbitration provision**

**84** (1) Every collective agreement must contain a provision governing dismissal or discipline of an employee bound by the agreement, and that or another provision must require that the employer have a just and reasonable cause for dismissal or discipline of an employee, but this section does not prohibit the parties to a collective agreement from including in it a different provision for employment of certain employees on a probationary basis.

(2) Every collective agreement must contain a provision for final and conclusive settlement without stoppage of work, by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable.

(3) If a collective agreement does not contain a provision referred to in subsections (1) and (2), the collective agreement is deemed to contain those of the following provisions it does not contain:

(a) the employer must not dismiss or discipline an employee bound by this agreement except for just and reasonable cause;

(b) if a difference arises between the parties relating to the dismissal or discipline of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including a question as to whether a matter is arbitrable, either of the parties, without stoppage of work, may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference to arbitration, and the parties must agree on a single arbitrator, the arbitrator must hear and determine the difference and issue a decision, which is final and binding on the parties and any person affected by it.

#### **Unworkable provision**

**85** (1) If in the minister's opinion a part of the arbitration provision in a collective agreement, including the method of appointing the arbitration board, is inadequate, or the provision set out in section 84 (3) (b) is alleged by either party to be unsuitable, the minister may at the request of either party modify the provision so long as it conforms with section 84 (1) and (2).

(2) Until modified under subsection (1), the arbitration provision in the collective agreement, or in section 84 (3) (b), as the case may be, applies.

#### **Failure to appoint arbitration board**

**86** (1) Despite section 85, if there is a failure to appoint or constitute an arbitration board under a collective agreement or under section 84 (3), the director, at the request of either party, must make the appointments necessary to constitute an arbitration board, and a person so appointed by the director is deemed to be appointed in accordance with the collective agreement, or under section 84 (3), as the case may be.

(2) Nothing in a collective agreement is to be construed as requiring the director to constitute an arbitration board consisting of more than a single arbitrator.

#### **Settlement officer**

**87** (1) Either party to the collective agreement, within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration, may request the director in writing to appoint a settlement officer to confer with the parties to assist them to settle the difference, if the request is accompanied by a statement of the difference to be settled.

(2) If a settlement officer is appointed under subsection (1), the settlement officer must, within 5 days of the appointment or within such further time as the director may allow,

- (a) inquire into the difference,
- (b) endeavour to assist the parties in settling the difference, and
- (c) report to the director on the results of the inquiry and the success of the settlement effort.

(3) When the director receives a report under subsection (2) and the parties have not settled the difference, the director may refer the difference back to the parties.

#### **Action by Labour Relations Board**

**88** If a difference arises during the term of a collective agreement, and in the board's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties, the board may, on application by either party to the difference, or on its own motion,

- (a) inquire into the difference and make recommendations for settlement, and
- (b) if the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement or, whether or not the difference is arbitrable, request the minister to appoint a special officer.

#### **Authority of arbitration board**

**89** For the purposes set out in section 82, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limitation, may

- (a) make an order setting the monetary value of an injury or loss suffered by an employer, trade union or other person as a result of a contravention of a collective agreement, and directing a person to pay a person all or part of the amount of that monetary value,
- (b) order an employer to reinstate an employee dismissed in contravention of a collective agreement,
- (c) order an employer or trade union to rescind and rectify a disciplinary action that was taken in respect of an employee and that was imposed in contravention of a collective agreement,
- (d) determine that a dismissal or discipline is excessive in all circumstances of the case and substitute other measures that appear just and equitable,
- (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement,

(f) dismiss or reject an application or grievance or refuse to settle a difference, if in the arbitration board's opinion, there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference,

(g) interpret and apply any Act intended to regulate the employment relationship of the persons bound by a collective agreement, even though the Act's provisions conflict with the terms of the collective agreement, and

(h) encourage settlement of the dispute and, with the agreement of the parties, the arbitration board may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

### **Fees and costs**

**90** (1) Unless the provision required under section 84 or 85 provides otherwise, each party to an arbitration under section 84, 85, 104 or 105 must bear

(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) equally the fees and expenses of the chair of the arbitration board or a single arbitrator, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.

(2) If the director appoints a single arbitrator or the chair of an arbitration board under section 86, each party must pay 1/2 the remuneration and expenses of the person appointed, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.

(3) If the director appoints a member of an arbitration board under section 86 on the failure of one of the parties to make the appointment, that party must pay the remuneration and expenses of the person appointed.

### **Delay by arbitration board**

**91** If a difference has been submitted to arbitration and a party to the arbitration complains to the minister that the arbitration board has failed to render a decision in a reasonable time, the minister may, after consulting the parties and the arbitration board, issue an order the minister considers necessary to ensure a decision will be rendered without further undue delay.

### **Powers of arbitration board**

**92** (1) An arbitration board may

- (a) determine its own procedure,
- (b) receive and accept evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law,
- (c) determine prehearing matters and issue prehearing orders,
- (d) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where
  - (i) work is or has been done or commenced by employees,
  - (ii) an employer carries on business, or
  - (iii) anything is taking place or has taken place concerning a matter referred to the arbitration board under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, and interrogate any person in relation to it, and

- (e) authorize a person to do anything the arbitration board may do under paragraph (d) and report to the arbitration board in the presence of the parties or their representatives as a witness subject to cross examination by each party.

(2) The jurisdiction of an arbitration board to hear and determine a difference does not cease until the matters in dispute have been finally resolved.

### **Summons to testify**

**93** (1) An arbitration board may, at the request of a party to the arbitration or on its own motion, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things it considers requisite to a full consideration of matters before the arbitration board, in the same manner as a court of record in civil cases.

(2) If an arbitration board consists of more than one person, the chair of the arbitration board may exercise all the authority of the arbitration board under subsection (1).

### **Decision of arbitration board**

**94** If a collective agreement provides for submission of a difference to an arbitration board consisting of more than one arbitrator, the decision of a majority of the arbitrators is the decision of the arbitration board, but if there is no majority decision, the decision of the chair of the arbitration board is the decision of the arbitration board.

**Effect of decision**

**95** The decision of an arbitration board is binding

(a) on the parties,

(b) in the case of a collective agreement between a trade union and an employers' organization, on the employers who are bound by the agreement and who are affected by the decision,

(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, on the council, the constituent trade unions in it and the employer or employers who are covered by the agreement and who are affected by the decision, and

(d) on the employees who are bound by the collective agreement and who are affected by the decision,

and they must comply in all respects with the decision.

**Filing decision**

**96** An arbitration board must, within 10 days of issuing an award, file a copy of it with the director who must make the award available for public inspection.

**Act not to apply**

**97** The *Commercial Arbitration Act* does not apply to an arbitration under this Code.

**Reference to Labour Relations Board**

**98** An arbitration board may, at any stage of an arbitration, refer to the board for a binding opinion and decision a question of labour relations policy or interpretation of this Code arising in the course of the arbitration.

**Appeal jurisdiction of Labour Relations Board**

**99** (1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred to it back to the arbitration board, stay the proceedings before the arbitration board or substitute the

decision or award of the board for the decision or award of the arbitration board, on the ground that

(a) a party to the arbitration has been or is likely to be denied a fair hearing, or

(b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.

(2) An application to the board under subsection (1) must be made in accordance with the regulations.

#### **Appeal jurisdiction of Court of Appeal**

**100** On application by a party affected by a decision or award of an arbitration board, the Court of Appeal may review the decision or award if the basis of the decision or award is a matter or issue of the general law not included in section 99 (1).

#### **Decision final**

**101** Except as provided in this Part, the decision or award of an arbitration board under this Code is final and conclusive and is not open to question or review in a court on any grounds whatsoever, and proceedings by or before an arbitration board must not be restrained by injunction, prohibition or other process or proceeding in a court and are not removable by certiorari or otherwise into a court.

#### **Enforcement**

**102** (1) If a party or a person has failed or neglected to comply with the decision of an arbitration board, a party or person affected by the decision may, after the expiration of 14 days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the Supreme Court registry a copy of the decision in the prescribed form.

(2) A decision filed under subsection (1) must be entered as if it were a decision of the court, and on being entered is deemed, for all purposes except an appeal from it, to be an order of the Supreme Court and enforceable as an order of the court.

#### **Section Repealed**

**103** [Repealed 1997-27-24.]

### **Division 4 — Expedited Arbitration**

#### **Expedited arbitration**

**104** (1) A party to a collective agreement may refer a difference respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable, to the director for resolution by expedited arbitration.

(2) No difference may be referred to the director under this section unless

(a) the grievance procedure under the collective agreement has been exhausted, and

(b) the application is made within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration.

(3) No difference under a collective agreement may be referred to the director under this section if

(a) the difference has been referred to arbitration under the collective agreement by the party who wishes to refer it under this section, or

(b) the time, if any, stipulated in or permitted under the collective agreement for referring the difference to arbitration has expired.

(4) If a difference is referred to the director within the time periods specified in this section, the director

(a) must appoint an arbitrator to hear and determine the matter arising out of the difference,

(b) must set the date on which the hearing by the arbitrator will commence, which date must be within 28 days after the day on which the difference was referred to the director, and

(c) may, if a party so requests and the other party agrees, appoint a settlement officer to assist the parties in settling the grievance before the hearing.

(5) If a settlement officer is appointed under subsection (4), the settlement officer must, within 5 days after the appointment or within such further time as the director may allow,

(a) inquire into the difference,

(b) endeavour to assist the parties in settling the difference, and

(c) report to the director on the results of the inquiry and the success of the settlement effort.

(6) If the parties are unable to settle the difference, the arbitrator appointed under subsection (4) must proceed to hear and determine the matter arising out of the difference and must, subject to subsection (7), issue a decision within 21 days after the conclusion of the hearing.

(7) If jointly requested to do so by the parties to the difference, the arbitrator appointed under subsection (4) must, if possible, issue an oral decision within one day after the conclusion of the hearing and must issue written reasons within the time specified in subsection (6).

(8) An arbitrator appointed under subsection (4) has all the power and jurisdiction of an arbitrator appointed under this Code or the collective agreement between the parties to the difference.

(9) This section applies to every party to a collective agreement and every person bound by a collective agreement, despite any provision in the collective agreement.

(10) The other provisions of this Part apply to an arbitration under this section, with the modifications necessary to accommodate appointments and expedited processes under this section.

#### **Consensual mediation-arbitration**

**105** (1) Despite any grievance or arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 84 (3), the parties to the collective agreement may, at any time, agree to refer one or more grievances under the collective agreement to a single mediator-arbitrator for the purpose of resolving the grievances in an expeditious and informal manner.

(2) The parties must not refer a grievance to a mediator-arbitrator unless they have agreed on the nature of any issues in dispute.

(3) The parties may jointly request the director to appoint a mediator-arbitrator if they are unable to agree on one, and the director may make the appointment.

(4) Subject to subsection (5), a mediator-arbitrator appointed by the director must begin proceedings within 28 days after being appointed.

(5) The director may direct a mediator-arbitrator to begin proceedings on such date as the parties jointly request.

(6) The mediator-arbitrator must endeavour to assist the parties to settle the grievance by mediation.

(7) If the parties are unable to settle the grievance by mediation, the mediator-arbitrator must endeavour to assist the parties to agree on the material facts in dispute and then must determine the grievance by arbitration.

(8) When determining the grievance by arbitration, the mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as he or she considers appropriate.

(9) The mediator-arbitrator must give a succinct decision within 21 days after completing proceedings on the grievance submitted to arbitration.

(10) Sections 89 to 102 apply in respect of a mediator-arbitrator and a settlement, determination or decision under this section.

### **Division 5 — Special Officer**

#### **Special officer**

**106** (1) If during the term of a collective agreement there is or is a likelihood of a dispute or difference arising out of or relating to the agreement, the minister may in the interest of industrial peace appoint a special officer.

(2) On his or her appointment, the special officer must investigate the dispute or difference and may

(a) confer with the parties,

(b) hold hearings,

(c) make recommendations,

(d) make orders he or she considers necessary or advisable, including, without limitation, orders that the dispute or difference be submitted to a specified stage or step in the grievance procedure under the collective agreement, or

(e) arbitrate the dispute or difference himself or herself.

#### **Effect of order**

**107** An order made by a special officer is binding on all persons bound by the collective agreement and all parties to the dispute or difference.

#### **Interim order**

**108** When a special officer makes an order on a matter not provided for by the collective agreement, or which differs from the provisions of the collective

agreement, the order is binding on the parties to the dispute or difference for a period not exceeding 30 days.

#### **Powers**

**109** For the purpose of investigating a dispute or difference or holding a hearing, a special officer has the powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act* and may enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

- (a) work is or has been done or commenced by employees,
- (b) an employer carries on business, or
- (c) anything is taking place or has taken place concerning a matter referred to the special officer under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, or interrogate any person in relation to it.

#### **Evidence**

**110** For the purpose of a hearing, a special officer

- (a) may receive and accept the evidence and information on oath, affidavit or otherwise that, in his or her discretion, he or she considers advisable, whether or not admissible as evidence in a court of law, and
- (b) must determine his or her own procedure, but must give an opportunity to an interested party to present evidence and make representations.

#### **Frequency of appointment**

**111** The minister may not appoint a special officer more than twice in connection with the same dispute or difference.

#### **Form of order**

**112** (1) An order of a special officer must be in writing signed by the special officer.

(2) The special officer must promptly

- (a) deliver a copy of his or her order to the board, the employer and the trade union, and

(b) take reasonable steps to communicate the provisions of his or her order to persons bound or affected by it.

#### **Notice of appointment to be sent to board**

**113** The minister must send to the board a copy of every appointment of a special officer under section 106.

#### **Other provisions to apply**

**114** The other provisions in this Part apply to matters arising under this Division.

### **Part 9 — Labour Relations Board**

#### **Labour Relations Board**

**115** (1) The Labour Relations Board is continued consisting of a chair, vice chairs and as many members equal in number representative of employers and employees, respectively, as the Lieutenant Governor in Council considers proper, all of whom are to be appointed by the Lieutenant Governor in Council after a merit based process.

(2) For the purposes of subsection (1), the chair must be consulted before the appointment of vice chairs and members.

#### **Application of *Administrative Tribunals Act***

**115.1** Sections 1 to 10, 43, 46, 47 (1) (c), 48, 49, 56, 57, 58 (1) and (2) and 61 of the *Administrative Tribunals Act* apply to the board.

#### **Divisions and officers of the Labour Relations Board**

**116** (1) There are to be 2 divisions of the board called the Mediation Division and the Adjudication Division.

(2) The chair may designate one or more vice chairs as associate chairs for either or both of the Mediation and Adjudication Divisions, and designate another vice chair as a registrar of the board.

(3) If the associate chair of a division is absent or unable to act, or the office of an associate chair is vacant, the chair may act as associate chair or may assign a vice chair to act.

(4) The chair may change an assignment or designation under this section.

#### **Panels**

**117** (1) The chair may establish one or more panels of the board.

(2) A panel has the power and authority of the board in matters referred to the panel by the chair or coming before it under rules of the board made under this Code.

(3) Two or more panels may proceed with separate matters at the same time.

(4) The chair may refer a matter that is before the board to a panel or a matter that is before a panel to the board or another panel.

(5) A panel of the board consists of

(a) the chair or a vice chair,

(b) the chair and 2 or more vice chairs,

(c) 3 or more vice chairs,

(d) 3 or more vice chairs, and members, equal in number, representative of employers and employees respectively,

(e) the chair or a vice chair, and one member representative of employees and one member representative of employers, or

(f) the chair or a vice chair, and members, equal in number, representative of employers and employees respectively.

(6) The chair may terminate an appointment to a panel and may fill any vacancy on a panel.

#### **Quorum**

**118** (1) The board or a panel of the board must not proceed with a matter unless a quorum is present and remains present throughout the proceeding.

(2) A quorum of the board consists of the chair or a vice chair, and members, equal in number, representative of employers and employees respectively.

(3) A quorum of a panel consists of the chair or the vice chair, if appointed under section 117 (5) (a), or all members of the panel, including the chair or vice chair.

#### **Proceedings**

**119** (1) The chair must preside at proceedings of the board and of all panels of which he or she is a member, and a vice chair must preside over all other panels.

(2) The decision of a majority of the members of the board or of a panel present at a proceeding is the decision of the board or panel, but if there is no majority, the decision of the chair or presiding vice chair governs.

#### **Question of law**

**120** The chair may establish a panel to which the board or another panel may refer a question of law respecting the interpretation of this Code, and its ruling is binding on the board or on the other panel.

#### **Delegation**

**121** (1) The chair may exercise any power or perform any duty or function of the board, an associate chair or member of the board.

(2) The chair may delegate to the associate chairs, the registrar or one or more of the other members a power, duty or function of the board or of the director.

#### **Employees of the board**

**122** (1) The board may, despite the *Public Service Act*, employ a secretary and other officers and employees it considers necessary for the purposes of this Code, and may determine their duties, conditions of employment and remuneration.

(2) This Code and the *Public Service Labour Relations Act* do not apply to the members of the board or the secretary, or the officers and employees of the board.

(3) The chair must designate an employee employed under subsection (1) as the information officer to advise the public with respect to this Code and its application to labour relations in British Columbia.

#### **Section Repealed**

**123 [Repealed 2004-45-110.]**

#### **Evidence**

**124** (1) The board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law.

(2) The board may request and receive a report from a person it appoints to investigate an application or to investigate and attempt to settle a dispute under this Code, a collective agreement or the regulations, and, despite section 146 (3), the board must disclose the report to the parties.

(3) Information relating to membership or any record that may disclose whether a person is or is not a member of a trade union produced in a proceeding before the board is for the exclusive use of the board and its representatives.

(4) Except with the consent of the board, a person must not disclose whether a person is or is not a member of a trade union.

#### **Summons and discovery of documents**

**125** On the recommendation of an officer appointed under section 14, 87 or 104 (4) (c), or on its own motion, the board may summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the officer or the board considers necessary to a full investigation and consideration of matters within the board's jurisdiction in the same manner as a court of record in civil cases.

#### **Practice and procedure**

**126** (1) The board must determine its own practice and procedure, but must give full opportunity to the parties to a proceeding to present evidence and make submissions.

(2) The board, subject to the minister's approval, may make rules governing its practice and procedure and the exercise of its powers and establish forms it considers advisable.

#### **Offices of the board**

**127** (1) The principal office of the board must be at or near Vancouver, and the board and panels of the board must sit at the places the chair decides.

(2) Documents may be filed with the board at its principal office or at other offices throughout British Columbia designated for that purpose by the chair.

#### **Publication of decisions**

**128** The board must render its decisions within a reasonable period of time and make all its decisions in proceedings under this Code available in writing for publication.

#### **Oath of office**

**129** A member of the board, before acting as a member, must take and sign before a notary public or commissioner for taking affidavits for British Columbia, and file with the minister, an oath or affirmation of office in the following form:

I, \_\_\_\_\_, do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and

perform the office of chair (or vice chair or member) of the Labour Relations Board, and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the board.

### **Sections Repealed**

**130** and **131** [Repealed 2003-47-38.]

### **General guidelines**

**132** (1) The board may formulate general guidelines to further the operation of this Code but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.

(2) In formulating general guidelines the board may request that submissions be made to it by any person.

(3) The board must make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions.

### **Hearing of complaint**

**133** (1) If, on application or complaint by any interested person, under section 14, this section or another provision of this Code or regulations, or on its own motion, the board is satisfied that any person has contravened this Code, a collective agreement or the regulations, it may, in its discretion, do one or more of the following:

(a) order a person to do any thing for the purpose of complying with this Code, a collective agreement or the regulations, or to refrain from doing any act, thing or omission in contravention of this Code, a collective agreement or the regulations;

(b) order a person to rectify a contravention of this Code or the regulations;

(c) refuse to make an order, despite a contravention of this Code, a collective agreement or the regulations, if the board believes it is just and equitable to do so in view of the improper conduct of the person making the application or complaint;

(d) except in relation to conduct regulated by Part 5, make an order setting the monetary value of an injury or loss suffered by a person as a result of a contravention of this Code, a collective agreement or the regulations, and directing a person to pay to the person suffering the injury or loss the amount of that monetary value;

(e) order an employer to reinstate an employee discharged in contravention of this Code, a collective agreement or the regulations;

(f) make another order or proceed in another manner under this Code, consistent with section 2, that the board considers appropriate.

(2) If a request is made to the board to exercise its discretion under section 65 or another provision conferring on the board a discretion to prohibit, restrict, confine, regulate, control, direct or require the performance of any act or thing, the board may exercise its discretion and make an order, impose conditions or proceed in a manner it considers to be in furtherance of the purposes set out in section 2.

(3) If at any time before or during a proceeding the board or a person appointed by it is able to settle all or part of the differences between the parties to the proceeding on terms not contrary to this Code, a collective agreement or the regulations, the board may issue a consent order setting out the terms of settlement agreed to by the parties, and this consent order has the same force and effect as an order under subsection (1).

(4) If in the board's opinion an application or complaint is without merit, it may reject the application or complaint at any time.

(5) If an application or complaint is made under this section or the minister makes a direction under Part 6 the board may, in its discretion, after giving each party to the matter an opportunity to be heard, make an interim order or designation pending a final resolution of the application or complaint under this section or a designation under Part 6.

(6) If the board is satisfied in any proceedings under this Code that a mistake has been made in naming or not naming a person as a party to the proceeding the board may direct that the name of the person be substituted, added or deleted as a party to the proceeding.

### **Conditions and undertakings**

**134** (1) If the board makes or may make a designation, decision or order under this Code, it may require, at any time before or after or both before and after the making of the designation, decision or order, that

(a) certain conditions specified by the board be observed or performed, or

(b) the applicant or complainant undertake to act or refrain from acting in a manner specified by the board.

(2) A breach of an undertaking or a refusal or neglect to observe or perform a condition specified by the board under subsection (1) is a contravention of this Code.

### **Filing order in Supreme Court**

**135** (1) The board must on request by any party or may on its own motion file in a Supreme Court registry at any time a copy of a decision or order made by the board under this Code, a collective agreement or the regulations.

(2) The decision or order must be filed as if it were an order of the court, and on being filed it is deemed for all purposes except appeal from it to be an order of the Supreme Court and enforceable as such.

(3) For the purposes of this section, a designation or direction under Part 6 is deemed to be a decision or order of the board.

### **Jurisdiction of board**

**136** (1) Except as provided in this Code, the board has and must exercise exclusive jurisdiction to hear and determine an application or complaint under this Code and to make an order permitted to be made.

(2) Without limiting subsection (1), the board has and must exercise exclusive jurisdiction in respect of

(a) a matter in respect of which the board has jurisdiction under this Code or regulations, and

(b) an application for the regulation, restraint or prohibition of a person or group of persons from

(i) ceasing or refusing to perform work or to remain in a relationship of employment,

(ii) picketing, striking or locking out, or

(iii) communicating information or opinion in a labour dispute by speech, writing or other means.

### **Jurisdiction of court**

**137** (1) Except as provided in this section, a court does not have and must not exercise any jurisdiction in respect of a matter that is, or may be, the subject of a complaint under section 133 or a matter referred to in section 136, and, without limitation, a court must not make an order enjoining or prohibiting an act or thing in respect of them.

(2) This Code must not be construed to restrict or limit the jurisdiction of a court, or to deprive a court of jurisdiction to entertain a proceeding and make an order the court may make in the proper exercise of its jurisdiction if a wrongful act or

omission in respect of which a proceeding is commenced causes immediate danger of serious injury to an individual or causes actual obstruction or physical damage to property.

(3) Despite this Code or any other Act, a court must not, on an application made without notice to any other person, order an injunction to restrain a person from striking, locking out or picketing, or from doing an act or thing in respect of a strike, lockout, dispute or difference arising from or relating to a collective agreement.

(4) A court of competent jurisdiction may award damages for injury or losses suffered as a consequence of conduct contravening Part 5 if the board has first determined that there has been a contravention of Part 5.

#### **Finality of decisions and orders**

**138** A decision or order of the board under this Code, a collective agreement or the regulations on a matter in respect of which the board has jurisdiction is final and conclusive and is not open to question or review in a court on any grounds.

#### **Jurisdiction of board to decide certain questions**

**139** The board has exclusive jurisdiction to decide a question arising under this Code and on application by any person or on its own motion may decide for all purposes of this Code any question, including, without limitation, any question as to whether

- (a) a person is an employer or employee,
- (b) an organization or association is an employers' organization or a trade union,
- (c) a collective agreement has been entered into,
- (d) a person is or what persons are bound by a collective agreement,
- (e) a person is or what persons are parties to a collective agreement,
- (f) a collective agreement has been entered into on behalf of a person,
- (g) a collective agreement is in full force and effect,
- (h) a person is bargaining collectively or has bargained collectively in good faith,
- (i) an employee or a group of employees is a unit appropriate for collective bargaining,

- (j) an employee belongs to a craft or group exercising technical or professional skills,
- (k) a person is a member in good standing of a trade union,
- (l) a person is included in or excluded from an appropriate bargaining unit,
- (m) an employer is included in or excluded from an accreditation,
- (n) a person is a dependent contractor,
- (o) an organization of trade unions is a council of trade unions,
- (p) a service is essential for the purposes of Part 6,
- (q) a person is described in section 68 (1),
- (r) a trade union, council of trade unions or employers' organization is fulfilling a duty of fair representation,
- (s) a site or place is a site or place of business, operations or employment of an employer,
- (t) a person is an ally,
- (u) a person is a professional,
- (v) a person exercises technical or professional skills, and
- (w) an activity constitutes a strike, lockout or picketing.

**General powers of board**

**140** The board, in relation to a proceeding or matter before it, has power to

- (a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the board considers necessary to a full investigation and consideration of a matter within its jurisdiction that is before it in the proceeding,
- (b) administer oaths and affirmations,
- (c) examine, in accordance with rules of the board, evidence submitted to it respecting the membership of an employee in a trade union seeking certification,

(d) examine documents forming or relating to the constitution or articles of association of

(i) a trade union seeking certification,

(ii) a trade union forming part of a council of trade unions seeking certification, or

(iii) an employers' organization seeking accreditation,

(e) examine records and make inquiries it considers necessary,

(f) require an employer to post and keep posted in appropriate places a notice the board considers necessary to bring to the attention of employees a matter relating to the proceeding,

(g) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

(i) work is or has been done or commenced by employees,

(ii) an employer carries on business, or

(iii) anything is taking place or has taken place concerning a matter referred to it under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it and interrogate any person in relation to it,

(h) order that

(i) a representation vote be taken, in accordance with Part 3 and the regulations, among employees affected by the proceeding, before or after a hearing the board may conduct in respect of the proceeding, and

(ii) ballots cast in the vote be sealed in ballot boxes and not counted until the parties to the proceeding have been given an opportunity to be heard by the board,

(i) enter an employer's premises to conduct representation votes during working hours,

(j) authorize a person to do anything the board may do under paragraphs (b) to (g) or paragraph (i) and report to the board,

- (k) adjourn or postpone the proceeding,
- (l) shorten or lengthen the time for instituting the proceeding or for doing an act, filing a document or presenting evidence in the proceeding,
- (m) amend or permit amendment of a document filed in the proceeding, and
- (n) add a party to the proceeding at any stage.

#### **Reconsideration of decisions**

**141** (1) On application by any party affected by a decision of the board, the board may grant leave to that party to apply for reconsideration of the decision.

(2) Leave to apply for reconsideration of a decision of the board may be granted if the party applying for leave satisfies the board that

- (a) evidence not available at the time of the original decision has become available, or
- (b) the decision of the board is inconsistent with the principles expressed or implied in this Code or in any other Act dealing with labour relations.

(3) Leave to apply for reconsideration of a decision of the board under this section may be granted only once in respect of that decision.

(4) Subsection (1) does not apply to a decision of the board to grant or deny leave under subsection (2) or to a decision made by the board on reconsideration.

(5) An application under subsection (1) must be made within 15 days of the publication of the reasons for the decision that is the subject of the application.

(6) If an application for leave is made under subsection (1), another party affected by the decision may apply for leave under that subsection within

- (a) the period referred to in subsection (5), or
- (b) 5 days of receiving the application,

whichever is longer.

(7) On reconsideration under this section the board may vary or cancel the decision that is the subject of reconsideration or may remit the matter to the original panel.

(8) An application under this section must be made in accordance with the regulations.

### **Variation and continuation of certification or accreditation**

**142** The board, on application by any party or on its own motion, may vary or cancel the certification of a trade union or the accreditation of an employers' organization.

### **Declaratory opinion**

**143** The board, on application by an employer or trade union, or on its own motion, may give a declaratory opinion on a matter arising under this Code if it considers it appropriate to do so.

## **Part 10 — Miscellaneous**

### **Powers of minister**

**144** For the purpose of obtaining information to which the minister is entitled under this Code, the minister or a person designated by the minister has and may exercise the power and authority of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

### **Power to enter and inspect**

**145** The minister or a person designated by the minister may, for the purposes of this Code, enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

- (a) work is or has been done or commenced by employees,
- (b) an employer carries on business, or
- (c) anything is taking place or has taken place concerning a matter referred to the minister under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, or interrogate any person in relation to it.

### **Information confidential**

**146** (1) The minister may receive and hold in confidence a proposal made by a party for settlement of a dispute or difference.

(2) If information relates to the business or affairs of any person, whether or not a party to a dispute, difference or other reference, the minister, if he or she believes disclosure of the information would be prejudicial to the person, may direct that the information must not be made public or that it be made public in the manner he or she directs.

(3) Information obtained for the purpose of this Code in the course of his or her duties by a member of the board, an industrial inquiry commission or other tribunal under this Code, a special officer, a mediator or other person appointed under this Code, an employee of any of them or an employee under the administration of the minister is not open to inspection by a person or a court, and the member, special officer, mediator or other person appointed under this Code or employee must not be required by a court or tribunal to give evidence relative to it.

#### **Payment of members of tribunals**

**147** A person appointed by the minister or the chair as a member of an industrial inquiry commission, committee of special advisors, industry advisory council or other tribunal established under this Code, or as a special officer, special mediator or fact finder must be reimbursed for reasonable travelling and out of pocket expenses incurred by the person, and may be paid remuneration the minister determines for each day's attendance in carrying out his or her duties under this Code.

#### **Execution of documents**

**148** For the purposes of this Code, an application to the minister, a notice requiring an employer and a trade union to negotiate or a collective agreement may be signed if it is made, given or entered into

- (a) by an employer who is an individual, by that employer, or if several individuals are joint employers, by a majority of them,
- (b) if the employers are represented by an employers' organization authorized by the employers, by the president and secretary of the employers' organization or any 2 of its officers or by a person authorized by resolution passed at a meeting of the employers' organization,
- (c) by a corporation, by one of its authorized managers or by one or more of its principal executive officers, and
- (d) by a trade union, by its president and secretary, by any 2 of its officers or by a person authorized by resolution passed at a meeting of the trade union.

#### **Board may require returns**

**149** (1) The board may direct a trade union or employers' organization that is a party to an application for certification or to an existing collective agreement to file with the board

- (a) an affidavit signed by its president, secretary or another official stating the names and addresses of its officers, and
- (b) a copy of its constitution and bylaws,

and the trade union or employers' organization must comply with the direction within the time specified by the board.

(2) The board may direct an employer that is a party to an application for certification or to an existing collective agreement to file with the board

(a) an affidavit signed by the president, secretary or another official stating the names and addresses of any of the employer's directors and principal administrative officers, and

(b) a statement setting out the nature of the employer's business and the location of his or her business or operations.

#### **Trusteeship over local unions**

**150** (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of the subordinate trade union under the constitution or bylaws of the provincial, national or international trade union is suspended, must, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the board a statement, verified by the statutory declaration of its principal officers, setting out the terms under which supervision or control is to be exercised and it must, on the direction of the board, file such additional information concerning such supervision and control as the chair requires.

(2) If a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, that supervision or control must not continue for more than 12 months from the date of the assumption without the consent of the board.

#### **Financial statements**

**151** (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.

(2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.

(3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.





