

June 5, 2009

Review of Labour Standards in the *Canada Labour Code*
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The Canadian Chamber of Commerce is pleased to have the opportunity to provide the perspectives of our federally-regulated members in response to the *Discussion Paper on the Review of Labour Standards in the Canada Labour Code (February 2009)*.

The needs of these employers and employees, who provide critical infrastructure services to Canadians, are very different. Therefore, the regulation governing their relationships needs to be flexible enough to allow them to protect their respective rights and serve Canadians effectively.

Our submission addresses recommendations for which our members had specific comments and upon which they agreed. Therefore, a lack of comment on a recommendation and/or recommendations should not be interpreted as support for, or opposition to, it and/or them.

We hope you find our submission a helpful contribution to your consultation. We would be pleased to discuss it with you and to be of any further assistance as your process moves forward.

Sincerely,



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THE CANADIAN CHAMBER OF COMMERCE



LA CHAMBRE DE COMMERCE DU CANADA

Discussion Paper on the Review of Labour Standards in the *Canada Labour Code*

June 2009

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Introduction:

The Canadian Chamber of Commerce is pleased to have the opportunity to provide the following submission as part of the consultation process initiated by Hon. Rona Ambrose, Minister of Labour, in response to the recommendations of the *Federal Labour Standards Review Commission* report (2006).

The Canadian Chamber of Commerce is Canada's most representative business organization. Through our network of more than 300 local chambers of commerce, we speak for 175,000 businesses of all sizes, nationwide. We pride ourselves on being "The Voice of Canadian Business" and work hard with the federal government to ensure its policies enable Canada's businesses to maximize their economic and social contribution to our national wellbeing.

Our comments are based upon input received from our federally-regulated members representing the transportation and banking sectors in response to the *Discussion Paper on the Review of Labour Standards in the Canada Labour Code* (February 2009).

These employers provide essential infrastructure to Canadians. Their needs – and those of their employees - are very different. Therefore, the regulation governing their relationships needs to be flexible enough to allow them to protect their respective rights and serve Canadians effectively.

Despite the difficult economic times, businesses recognize their employees are key to their success. Canadian Chamber members have indicated that skills and training is still one of their top priorities, demonstrating that having – and keeping - the right people is seen as critical to their competitiveness and survival. With growth pretty much out of the question for now, businesses are focused on retaining existing customers by providing excellent service and competitive prices.

Many employers are looking ahead to better economic times and know that the employees they have today are an investment in best positioning themselves for the post-recession period.

Our submission is structured around the questions posed in the *Discussion Paper*, i.e.:

1. *What is your overall opinion of the recommendations in the Commission's report? Do you believe that the report, on the whole, strikes an appropriate balance between the needs and interests of employees and those of employers? Do they promote good public policy?*
2. *From your perspective, what are the most important recommendations? What is your assessment of the positive impact of these recommendations for you personally or for the constituency you represent? Do you have any supporting data, studies or other evidence that could be shared with us?*

3. Are there recommendations that you would consider workable if they were slightly modified? Are there recommendations that you would deem acceptable, provided that other recommendations in the Commission's report are also adopted or implemented?

4. Are there recommendations that in your view should be studied further before deciding whether or not they should be part of a legislative package?

Our submission addresses recommendations for which our members had specific comments and upon which they agreed. Therefore, a lack of comment on a recommendations and/or recommendations should not be interpreted as support for, or opposition to, it and/or them.

1. What is your overall opinion of the recommendations in the Commission's report? Do you believe that the report, on the whole, strikes an appropriate balance between the needs and interests of employees and those of employers? Do they promote good public policy?

Overall, the Commission's report meets its objective of maintaining a balance between the perspectives of employers and workers. In our members' view, many of the recommendations recognize that, "Canada must maintain the dynamism of its market economy in order to sustain high labour standards; regulatory interventions in that economy must be carefully considered and implemented in such a way as to ensure the competing employers operation on a level playing field;"¹ As will be seen from their comments, however, this is not the case with all recommendations.

Although the principle of "regulated flexibility" is articulated in the Commission's report, our members found several recommendations lack the flexibility – and clarity - needed by employers and employees in managing their respective relationships. (See sections 3 and 4.) The world has changed since the *Federal Labour Standards Review Commission* issued its report in 2006. In 2006, Canada's unemployment rate was 6.3 percent². Our gross domestic product (GDP) grew by approximately 3.1 percent that year compared to 2005.³ In 2009, approximately 65 per cent of the world's countries are in recession. In the first three months of 2009 Canada's GDP fell by 1.4 percent, its largest quarterly drop since 1991.⁴ In May 2009, Canada's unemployment rate stood at 8.4 percent, its highest level in 11 years.⁵

The result is lower demand for products and services coupled with tighter credit access. This constrains businesses' ability to survive, let alone grow. If ever Canadian employers needed flexibility in managing their relationships with employees, it is now. In these grave economic times, it is vital that the government not add any additional cost and/or administrative burden to businesses through additional regulations that do not address a real problem in a practical way and result in improvements for either employees or employers.

¹ *Fairness at Work*, Federal Labour Standards for the 21st Century, Federal Labour Standards Review, 2006.

² Statistics Canada

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Federally-regulated employers need regulation that is fair and clear to ensure they understand their responsibilities to their employees. At the same time, they need the latitude to meet the needs of their operations and the thousands of businesses of all sizes – and millions of Canadians – depending upon them.

The overall objective of Part III of the *Canada Labour Code* is to define minimum standards of employment for hours of work, wages, holidays/vacations and leaves. Using those minimums as a base line, employers and employees need to be able to manage their relationships according to their respective needs as independently of government intervention as possible.

2. From your perspective, what are the most important recommendations? What is your assessment of the positive impact of these recommendations for you personally or for the constituency you represent? Do you have any supporting data, studies or other evidence that could be shared with us?

In our member's opinion, the following recommendations are most important/would have a positive impact on federal labour standards because they:

- Recognize the changing nature and diversity of Canada's workforce;
- Would streamline processes and make them more efficient;
- Show an appreciation of the obligations that employees have outside of the workplace;
- Acknowledge that employees have responsibilities to their employers;
- Demonstrate that employers benefit by investing in their employees;
- Would provide tools for employers to learn more about their rights and responsibilities under the *Canada Labour Code*.

Section I: Responding to the Evolving Workplace

A. Hours of Work

1. Overtime

c) Right to Refuse Overtime

Commission Recommendations:

• An employee should have the right to refuse overtime if this would require him or her to work more than 48 hours per week or more than 12 hours per day, except in the event of an emergency. Other thresholds for refusing overtime could be provided by regulation, ministerial permit, collective agreement, or a proposal approved through the workplace-level consultations discussed on pp. 27-30. In order to facilitate transition to this new arrangement, employers that presently require employees to work overtime above these limits should be allowed to continue doing so for a period of one year following the coming into force of the new provisions.

• An employee should have the right to refuse work beyond his or her regularly scheduled work: if this would conflict with significant family-related commitments that the employee cannot reasonably be expected to alter or avoid; if this would interfere with scheduled educational commitments; and, in the case of part-time employees, if this would create a scheduling conflict with other employment. (R. 7.37-7.38)

This recommendation recognizes that workers have obligations outside the workplace that need to be respected. That said, there are federally-regulated industries, e.g., transportation, in which that right must be balanced with emergency requirements for employees to work overtime beyond that stipulated in these recommendations. In these situations, employers need to have the right to call upon employees to work overtime if it is critical to the safety of the public and/or would cause significant economic harm to the business or the general public.

To ensure employers and employees know their rights and responsibilities, a clear definition of a “week” is required, e.g., midnight Sunday to 11:59 p.m. the following Saturday, although many employers would be satisfied with any defined 7-day period.

3. Shiftwork

Commission recommendation:

• Except in cases of unforeseeable circumstances beyond the control of the employer, employees should be entitled to advance notice of shift changes of at least 24 hours (or such other period as may be specified in a collective agreement or in a proposal approved through the workplace-level consultations discussed on pp. 27-30). An employer should be prohibited from firing or otherwise penalizing an employee who, as a result of the lack of notice, cannot perform work for all or part of the shift hours, including overtime hours added to a previously scheduled shift. (R. 7.48)

Employers must be assured that there will be recognition of the need “in cases of unforeseeable circumstances beyond their control” that they will not be obliged to provide the stipulated minimum 24 hours notice of shift changes. If that can be accomplished, these recommendations are reasonable for employers and employees and would ensure each is aware of their rights and responsibilities.

4. Exclusion of Managers, Superintendents and Professionals from Hours of Work Rules

Commission Recommendation:

• Existing provisions of Part III, which exclude managers, superintendents, employees exercising management functions and professionals from hours of work regulations, should remain unchanged at present (R. 4.8)

Our members support this recommendation as the salaries of such employees often include a premium that gives them benefits superior to collecting overtime. The legislation must include explicit measures to prevent excluded employees from making claims for overtime compensation.

B. Annual Vacations

4. Postponement of Vacation Leave

Commission Recommendations:

• An employee on a leave recognized under Part III (such as sick leave, maternity leave, parental leave, compassionate care leave, bereavement leave or reservists' leave) at a time when vacation leave must be provided under Part III should have the right to postpone his or her vacation until the end of the leave, or to another time with the employer's consent.

• Likewise, an employee should be allowed to interrupt a vacation and postpone unused vacation days to a later date, to be agreed with the employer, when another leave recognized under Part III coincides with the vacation period. Alternately, the employee could decide to waive that portion of the annual vacation which coincides with the other leave. (R. T7.3)

This recommendation acknowledges the changing nature of our workforce, e.g., leaves available to/required by employees. Allowing employees to postpone and/or interrupt vacation when recognized leaves come into effect is reasonable. However, this right must be balanced with the needs and nature of the business, e.g., seasonal operations, the availability of workers to stand in for those on vacation, workload, etc.

C. General Holidays

1. Substitution of General Holidays

Commission recommendation:

• Part III should allow the employer, on the written request of an individual employee, to substitute one or more cultural or religious holidays for any general holiday under Part III. (R. 7.68)

This recommendation recognizes the diversity of Canada's workforce and that employees should be able to substitute a general holiday with a paid day off. However, this clause should not override other sections in the *Canada Labour Code* and be left to the discretion of the employer based on the needs of the business. For example, some continuous operations may require employees to work on their religious holidays. In other workplaces there may be safety concerns for an employee working alone on a statutory holiday that is observed by the rest of the employee body.

E. Termination of Employment

1. Employee Notice of Termination

Commission Recommendations:

• Employees should be required to give their employer two weeks notice of their intention to quit. This requirement should apply only if:

- the employee has been employed for at least three months;**
- the employee has not first been given notice of termination by the employer; and**
- the employer has provided the employee with a written statement of employment terms that stipulates that notice to quit must be given and that failure to give it will result in a monetary penalty.**

• If an employee quits without giving notice, and the employer suffers actual loss as a result, the employer should be able to withhold one day's pay from any monies owing to the employee for each week of the notice period that the employee has failed to complete. If an employer wrongfully withholds pay from an employee, an inspector may order the employer to repay any such sum, together with interest. (R. 8.1-8.2)

Employers' obligation to employees is clear with regard to termination notice. It is only fair that employees should be required to provide two weeks notice to their employer of their intention to resign. If this notice is not provided, the employer should have the right to withhold a reasonable financial penalty – as specified in the above recommendations – from the employee's final pay. That said, allowances must be made for circumstances in which employees cannot provide two weeks notice that are beyond their control.

5. Group Termination of Employment

Commission Recommendations:

- ***The current provisions of Part III dealing with group terminations should be retained, subject to the following modifications designed to make the procedures more fair, consistent and expeditious:***
 - ***The Minister's power to waive the required procedures should be delegated to Regional Directors of the Labour Program; and***
 - ***The criteria for exercising this power should be more clearly defined at present. (R. 11.2)***

The current provisions – having been in place since 1971 – are outdated and irrelevant. However, until a thorough review that addresses such issues as updating the termination and severance divisions is completed, this recommendation is acceptable to our members.

G. Education and Training

1. Pay for Required Training

Commission Recommendation:

- ***Employers who require their employees to attend training sessions should pay during their participation. (R. 11.5)***

Most employers consider employee job-related training an investment in their businesses' competitiveness. Therefore, it is logical to compensate employees for training required to improve their skills. However, this requirement should not apply when the required training is a pre-requisite for a new employee to qualify for a position. Employers should also have the flexibility to enter into a training contract with employees that stipulates they will remain with the employer for a specified period of time after completing the training. This would ensure employers benefit from the improved skills attained by employees.

H. Communicating with Employees

2. Deductions from Pay

Commission Recommendations:

- ***Employers should be entitled to deduct from an employee's wages reimbursement for personal charges or fines incurred by the employee provided that***
 - (a) the amount does not exceed one day's wages for each pay period;***
 - (b) the rules governing personal use of company property or liability for fines have been announced and agreed to in advance;***
 - (c) the sums owing are clearly specified in an account, legal notice, traffic ticket or similar document, which the employer provides to the employee;***
 - (d) the employer has suffered actual financial loss; and***
 - (e) the employee does not deny incurring the charge or fine.***

- ***The employee should have the right to appeal against a deduction to an inspector, and if the appeal succeeds, the employer should immediately return the money to the employee, together with interest. (R. 5.7)***

This recommendation is long overdue especially for those industries in which there is a possibility employee action, e.g., using employer-owned vehicles, could result in fines, etc. Implementation of this recommendation could increase employees' sense of accountability for their actions. However, there should be certain conditions to limit the application of deductions to those in which the employer has a strong legal basis for recovering costs and that there is no significant hardship imposed on the employee as a result.

Our members agree that pre-agreement on employee liability for fines would be unmanageable for employers and employees.

3. Easier Calculation of Statutory Benefits

Commission Recommendation:

- ***The Minister should enact regulations that will permit easy calculation of benefits and other entitlements accruing to employees who are paid on any basis other than time. (R 5.6)***

Our members agree. This recommendation recognizes the need to streamline processes and that employees whose compensation is not based upon time/hours worked should not be penalized for absences such as statutory holidays, vacations, etc.

Section III: Smart Compliance

3. A New Adjudicative Structure

a) Director of Adjudication Services

Commission Recommendations:

- ***A new adjudication system should be established under a Director of Adjudication Services (DAS). The DAS should report not to the Chief Compliance Officer, but to a more senior official at the Labour Program. The DAS should have the authority to:***

- o provide information to workers and employers concerning their procedural and substantive rights and responsibilities;***
 - o receive and process complaints concerning unjust dismissal;***
 - o assist the parties to such complaints to resolve their differences;***
 - o dismiss claims that are patently frivolous or vexatious or belong elsewhere;***
 - o assign cases for adjudication; and***
 - o take all necessary steps to ensure the proper operation of the adjudication system.***
- ***Separate reporting lines and a clear division of responsibilities should be established between the Chief Compliance Officer and the Director of Adjudication Services, in order to ensure the adjudicative independence of Hearing Officers.***

• Staff of the Director of Adjudication Services should process incoming unjust dismissal complaints and appeals from inspectors' decisions; ensure that those that are eligible for adjudication are dismissed or diverted elsewhere; and assist the parties to resolve their differences, if possible, and if not, bring matters forward to a hearing promptly and with the issues clearly defined. The Director of Adjudication Services should develop strategies for assisting unrepresented workers and employers to secure representation or to represent themselves at hearings. (R. 8.6, 8.7, 9.13, 9.15, 9.16, 9.17, 9.18)

Our members welcome this recommendation which would streamline the adjudication process and make it more effective. They consider the clear division of responsibilities between the Chief Compliance Officer and the Director of Adjudication Services (DAS) - and the latter's authority to "dismiss claims that are patently frivolous or vexatious or belong elsewhere" - particularly helpful.

6. Inspectors' Access to Records

Commission Recommendations:

- Part III should be amended to provide inspectors with the authority to obtain records in the hands of third parties where such records are relevant to determining any matter arising under the Code.**
- Part III should be amended to give inspectors the ability to obtain a court subpoena ordering production of employment records or other documents relevant to proceedings under Part III.**
- Failure to keep records or to produce records on request should give rise to a presumption that the employee's claim is valid. (R. T.9.1, T.9.2)**

Inspectors should have access to relevant records for their investigations. That said, the provision that an employee's claim is assumed to be valid if the employer fails to keep or produce records when requested is reasonable only if measures are taken – and tools made available - to ensure this is well understood by employers, particularly smaller businesses, and they have sufficient time to implement the recommendations.

Annex A: Remaining Recommendations

Recommendation 4.14

- A special effort should be made to acquaint employers of small and medium-sized enterprises (SMEs) with their obligations under Part III and to work with them and their representatives to secure higher levels of compliance. In addition, all procedural provisions of Part III should be reviewed from the perspective of SMEs and, whenever possible, simplified forms, filing and reporting procedures should be adopted.**

This recommendation is critical. It acknowledges that lack of compliance is, in the vast majority of cases, due to lack of knowledge and resources rather than intent.

Recommendation 5.5

- The Labour Program should institute a toll-free number and launch a user-friendly website to which workers and employers can direct inquiries for detailed information on Part III. The notice that all employers are presently required to post advising employees of their rights under Part III should prominently display the relevant coordinates.**

- **To avoid unnecessary duplication, the Minister should consult with other agencies mandated to protect workers (such as the Canadian Human Rights Commission) with a view to dispensing such information through a common poster, a common user-friendly website and a common toll-free number.**

This recommendation would give employers and employees another tool to learn more about their rights and responsibilities under Part III of the *Canada Labour Code*. It reflects a recommendation made by the Canadian Chamber of Commerce in our 2005 submission to the *Federal Labour Standards Review Commission*.

3. Are there recommendations that you would consider workable if they were slightly modified? Are there recommendations that you would deem acceptable, provided that other recommendations in the Commission's report are also adopted or implemented?

The recommendations included in this section are, in our members' opinion, workable - with modifications - to ensure clarity so employers and employees understand their rights and responsibilities. Modifications also proposed would make some recommendations consistent with other provisions of the *Canada Labour Code*.

Section I: Responding to the Evolving Workplace

A Hours of Work

1. Overtime

a) Time Swaps

Commission Recommendations:

• **An employer should be allowed to permit an employee, upon his or her written request, to work in excess of daily or weekly standard hours of work at straight time rates, in order to make up for time off taken, or to be taken, at a time specified in the request. However, the employee should not work more than 48 hours per week (R. 7.43)**

Our members agree with this recommendation with the following suggested modifications/clarifications:

- The employer has the flexibility to ask for a written request from the employee;
- That a "week" be clearly defined, e.g., from midnight Sunday to 11:59 p.m. the following Saturday.

b) Method of Compensating Overtime

Commission Recommendations:

• **Part III should permit an employee and his or her employer to agree that overtime hours will be compensated by time off with pay, at the rate of one and one half hours for every hour worked as overtime, to be taken at a time mutually agreeable to the employer and employee.**

• Banked overtime should be used or paid out within three months of being earned, (unless otherwise provided by collective agreement or in a proposal approved through the workplace level consultations discussed on pp. 27-30). However, an employee should have the right to request an extension in writing. The employee should also have the right to immediate payment upon request, in which case the employer should pay out the banked overtime at the end of the pay period next following the request (R. 7.40-7.41)

Our members agree with this recommendation, but are concerned that the three-month payout period does not allow enough flexibility for employees or employers. They propose that six to twelve months would be more reasonable and consistent with other timeframes in the *Canada Labour Code*, e.g., for compensation for vacation time not taken.

5. Mechanisms to adjust working hours

b) Emergency Work Exception

Commission Recommendations:

- The definition of emergency work in Part III should be expanded to clearly specify that maximum hours of work may be exceeded to the extent necessary to deal with an emergency that poses a significant and immediate threat to human life, health or safety, or extensive damage to property. However, emergencies should not include foreseeable or regularly recurring cyclical functions in demand for the employer's goods or services.**
- The definition of emergency work should also be expanded to cover urgent and essential work to assist customers facing similar emergencies. (R. 7.36)**

Our members agree that these recommendations are reasonable with one caveat; those in the transportation sector consider it essential that that the definition of “emergency work” be clarified to include weather-related issues.

e) Sectoral Conferences

Commission Recommendations:

- The Minister should be authorized to convene, on his own initiative, or at the request of interested parties, a sectoral conference to consider adjustments to the regulation of working time or to any other provisions of Part III that could be adjusted on a sector-specific basis through regulation.**
- The process to establish new exemptions or special rules regarding hours of work or other labour standards should be based on the sectoral conference model. This model should also be used to review existing exemptions and special rules. Regulations authorizing a departure from the statutory standard should be reviewed every five years, with an opportunity for all interested parties to comment. Repeal of, or changes to, existing regulations should be implemented gradually, bearing in mind the impact on both employers and employees (R. 7.11-7.16 and 7.34).**

Our members consider a sectoral conference model appropriate only if there are issues of relevance to a specific sector needing to be addressed. This is because, in their view, a sectoral approach runs the risk of leading to more cumbersome and/or patchwork regulations. It could also lead to costly administrative modifications, ongoing costs and potential inequities for companies with operations in multiple sectors.

They suggest that the recommendation be modified to reflect that reviews of regulatory exemptions be undertaken only when needed with no specific timelines, i.e., no mandated review every five years.

B. Annual Vacations

1. Length of Vacation Leave

Commission Recommendations:

- ***Annual vacations should be increased to three weeks after five years of service and to four weeks after 10 years of service. Vacation pay should be correspondingly increased.***
- ***Employees with less than five years' service should be entitled to a third unpaid week of vacation upon written request. Employees should only be allowed to take the third week at a time agreed to by the employer, and only in the year in which the leave is requested. (R. 7.61-7.62)***

Our members agree that the three-week paid vacation period should begin after five years of work and that vacation pay should be increased accordingly. However, they wish to see the recommendation modified to reflect that the introduction of a third, unpaid, week of vacation for employees with less than five years service be left to the discretion of the employer in response to an employee request.

2. Waiver of Vacation Leave

Commission Recommendation:

- ***Employees' vacations should be waived only upon their written request. They should have sole discretion to withdraw the waiver. (R.7.65)***

It is our members' view that employees be allowed to waive their vacations as long as they request to do so in writing and provide a reasonable period of notice. The recommendation should be modified to include language that would specify a reasonable amount of notice to be provided by the employee to the employer. The recommendation should also be revised to preclude employees from having sole right to revoke such an arrangement. It is possible that the employee could revoke a waiver arrangement after having been "paid out" for his or her vacation. This would leave the employer and employee in the position of having to agree upon another arrangement, e.g., equivalent unpaid time off.

C. General Holidays

3. Method of Compensation for Holiday Work

Commission Recommendation:

- ***Employees required by their employer to work on a general holiday should have the right to determine the manner in which they are compensated. They could choose to receive either: (a) time and-a-half for hours worked, plus general holiday pay; or (b) time-and-a-half for hours worked, plus another day off with pay, to be taken within a specified period. (R. T7.6)***

Our members support the principle of multiple compensation options for employees who are required to work on a statutory holiday. They suggest that a third option, i.e., employees banking their time at the rate of time-and-a-half for hours worked. The nature of that compensation should be determined by the employer according to the needs of the business. For example those businesses defined in the Discussion Paper as a “continuous operation” would have needs that will vary greatly from those who keep, by and large, weekday business hours.

I. Coverage Under Part III

4. Temporary and Part-Time Workers

b) Temporary Workers – Coverage under Part III

Commission Recommendation:

Temporary employees who have worked for the same employer for periods that cumulatively total at least one year should be deemed to have completed the period of service required for statutory rights under Part III as if their service had been “consecutive,” provided that the interval between successive periods of service does not exceed sixty days. (R. 10.5)

This recommendation is reasonable. However, a maximum interval period of 30 days is proposed. This makes it easier for employers to administer as it would be similar to that of with an employee who takes four consecutive weeks of vacation.

6. Employment of Children

Commission Recommendations:

- ***The Minister’s regulation-making power should be amended to enable the Minister to adopt regulations dealing with the employment of persons under the age of 16, or between the ages of 16 and 18.***
- ***Part III should ban dangerous work for workers under the age of 18. (R. 10.8-10.9)***

There should be special measures to protect young workers in the *Canada Labour Code*. However, these measures should include wording to allow young people to participate in educational job shadowing programs.

A clear definition of “dangerous work” is required.

Section III: Smart Compliance

5. Dealing with Other Part III Infractions

d) Orders for Costs

Commission Recommendations:

- ***Inspectors and Hearing Officers should have the right to order full compensation for employees whose Part III rights have been violated, including some compensation for advocacy and other costs incurred in seeking redress.***
- ***Inspectors and Hearing Officers should have the power to order the employer to pay the Labour Program’s cost of investigations and hearings, according to a fixed tariff. (R. 9.25, 9.27)***

Our members support this recommendation. However, Inspectors should not be in a position to order costs. It may be appropriate for Hearing Officers (Adjudicators and Referees) to have this power as they make quasi-judicial decisions, findings of fact and follow a more formal process. If costs are to be awarded they should be contemplated against both employers and workers to discourage frivolous and vexatious actions. If employers are to pay the costs of investigations and hearings, there should be some form of reciprocal obligation on employees.

4. Are there recommendations that in your view should be studied further before deciding whether or not they should be part of a legislative package?

We have divided this section into two parts. Part A includes recommendations that our members believe could be workable but raise issues that warrant further study before being considered for inclusion in any new legislation. For example, several propose regulations to address issues/problems that, to our members' knowledge, there is no evidence exist.

Part B includes recommendations that our members believe should not be implemented because they are outside of the mandate of Part III of the *Canada Labour Code*; contradict the notions flexibility and clarity in regulation and/or are covered in other legislation, e.g., the *Canadian Human Rights Act*.

Part A

Section I: Responding to the Evolving Workplace

A. Hours of Work

2. Meal Breaks and Rest Periods

a) Meal Breaks

Commission Recommendations:

- ***A meal break of 30 minutes should be provided for every period of five hours of work. Meal breaks would be unpaid, unless the employee is not permitted to leave the work site.***
- ***Meal breaks could be postponed in the event of an emergency, or in accordance with a proposal approved through the workplace-level consultations discussed on pp. 27-30. Exemptions and special rules could also be established by regulation. (R. 7.58)***

Our members are unaware of any evidence that meal breaks and rest periods are a problem. Additional regulation could disrupt current flexibility in employee/employer relationships to the detriment of both.

b) Daily and Weekly Rest

Commission Recommendations:

- ***The minimum weekly rest period should be increased from 24 to 32 consecutive hours. Employees should also be entitled to eight hours of rest without pay in every 24 hours.***
- ***Rest periods could be postponed in an emergency, or in accordance with a proposal approved through the workplace-level consultations discussed on pp. 27-30. Exemptions and special rules could also be established by regulation. (R. 7.58)***

It is unclear to our members that any need to change rest periods has been demonstrated and are unaware of employee groups raising it an issue. Imposing a one-size-fits-all regulation across the entire spectrum of federally-regulated businesses fails to acknowledge the widely-varying needs of these companies and their employees. It also fails to recognize that needs vary amongst employee groups within the same company, e.g., pilots and flight attendants. This is the type of issue that should be negotiated through the collective bargaining process and not federal regulation.

5. Mechanisms to Adjust Working Hours

a) Ministerial Permits

Commission Recommendations:

- ***When determining whether to grant or deny a permit, the Minister should provide interested parties with the opportunity to make their views known. The Minister should weigh the competing considerations and allow variations or adjustments only if, on balance, a reasonable case has been put forward for doing so.***
- ***Permits should be limited to one year's duration. Any permits currently in force would remain valid until their expiration date.***
- ***When the employer seeks the renewal of a permit, the Minister (or another delegated official) should presume that renewal is appropriate unless he has reason to believe that conditions have changed since the permit was originally issued; the employer has exceeded the hours authorized by the permit; or the employer has been guilty of an unfair employment practice under Part III (R. 7.4, 7.7 and 7.8).***

While it is not clear to our members that employees have requested this right, they believe it is reasonable that they have it. That said, there does not appear to be a reason for employers to be obliged to facilitate this process. Employers already have the obligation to provide 30 days notice to employees that an application for a Ministerial Permit is being made and to advise them of their right to make their views known outlining the applicable timeframe for doing so.

c) Averaging Arrangements and Modified Work Schedules

Commission Recommendations:

- ***The grounds for using an averaging arrangement or modified work schedule should be set out with greater precision in Part III.***
- ***Prior to initiating an averaging scheme or modified work schedule, the employer should be required to provide the Labour Program with the following: a notice setting out the terms and proposed duration of the scheme; a statement disclosing the grounds on which the scheme has been instituted and the procedures, if any, adopted by the employer to ascertain employee support; and an undertaking to discontinue the scheme if the conditions justifying it expire.***
- ***An averaging arrangement or modified work schedule should only be valid for one year, unless otherwise provided in a collective agreement or in a proposal approved through the workplace level consultations discussed on pp. 27-30.***
- ***Non-compliance should be treated as a violation of Part III, should result in cancellation of the scheme and should disqualify the employer for up to six months from applying to initiate a new scheme.***

• Part III should be amended to ensure that employers may accommodate genuine requests by individual employees for a modified work schedule. (R. 7.3, 7.6, 7.7, 7.39)

Our members believe the negotiation of averaging arrangements and modified work schedules should remain between employers and employees. It should be the employer's right to accept or deny averaging arrangements due to the operational requirements of their businesses. Today, employers are not required to notify the government of averaging arrangements and modified work schedules. It should stay this way.

The recommendation that non-compliance be treated as a violation of Part III is unreasonable in our members' view. Non-compliance by federally-regulated employers is most likely to be attributed to a lack of information, understanding or resources than to intent. Without proof of intent, the six-month disqualification period is unreasonable and would create undue hardship for businesses.

The one-year timeframe for averaging arrangements and modified work schedules would be an additional administrative burden on businesses which is acknowledged in the Discussion Paper, i.e., "...this may only end up creating more administrative burdens in a workplace where employees have irregular working hours over the long-term." (pg. 26)

d) Workplace-Level Consultations

Commission Recommendations:

- Part III should be amended to facilitate consultation between employers and workers concerning any statutorily permitted variation from working time standards. The new workplace consultative process should be available as an alternative to existing statutory procedures of Part III in order to vary working hours. It could also be used to provide variations in other standards, such as the timing of rest periods, rules on using or paying out banked overtime, and the fractioning of vacation leave over a year.**
- In a workplace with fewer than 20 workers, the employer could elect to conduct consultation through an open meeting with all employees. Otherwise, the employer would initiate consultations by forming a Workplace Consultative Committee (WCC). The WCC should be broadly representative of the workers affected by the matters under discussion. It could be formed in any manner (e.g., nomination, election, or lottery), provided the employer does not attempt to control the outcome of the consultation through the selection of WCC members. Members of the WCC should have the right to paid time off to participate in its activities and would be protected from reprisals by the employer.**
- The employer should establish a timetable for discussion, allowing adequate time for various steps, and be allowed to terminate the process if it does not conclude within a reasonable period. The WCC should hear and consider all of the employer's proposals, and be entitled to request and receive relevant information concerning the need for and consequences of the proposals. It should be allowed to offer its own suggestions by way of amendments to the employer's proposals.**

- ***Upon conclusion of the consultative process, or the expiry of the time allotted to it, the WCC should prepare and submit the proposals to a secret ballot vote of the affected employees. In advance of the ballot, each employee should receive a brief written statement of the issues and of the proposals to be voted on. If a proposal receives 50% +1 of the votes cast, notice of approval should be filed with the Regional Director of the Labour Program. The proposal would then take effect. It would be in force for the duration specified by the parties or, in the absence of this, three years. The proposal would have no effect if it is not approved by the necessary majority, if the process is terminated because of time delays, or if the employer withdraws the proposal from consideration rather than allowing amendments proposed by the WCC.***
- ***If a union represents affected workers, the employer should only conduct workplace-level consultations with the union. The scope and manner of workplace consultation should be determined by the law of collective bargaining. The union should follow its normal process for consideration and approval of a proposal. (R. 7.18-7.25, 7.27, 7.29 and 7.30)***

Our members agree that where workers are represented by a union, employers should conduct workplace-level consultations only with the union. Where there is no union, the initiation of a Workplace Consultative Committee (WCC) should be left to the discretion of employers and employees. The proposed role of the WCC, i.e., to “*hear and consider all of the employer’s proposals, and be entitled to request and receive relevant information concerning the need for and consequences of the proposals...*” and to “*...be allowed to offer its own suggestions by way of amendments to the employer’s proposals*”... would dilute employer/employee relationships and their abilities to address issues directly with each other by providing an unnecessary intermediary between them.

B. Annual Vacations

3. Division of Vacation Leave

Commission Recommendations:

- ***Part III should specify that annual vacations must be provided in one unbroken period, unless the employee requests in writing that the vacation be divided into two or more segments and the employer agrees. More detailed rules could be set out in a collective agreement or in a proposal approved through the workplace-level consultations discussed on pp. 27-30. (R. 7.63)***

To our members’ knowledge, there was not a call for changes of this nature from either employers or employees during the Part III review. Employees should have the right to at least two weeks of unbroken vacation leave, but periods beyond that may prove to be unworkable in certain sectors. They should also retain the right not to take vacations if they wish and to be paid out for them.

The regulation of vacation would encroach on the rights of businesses to manage their work. Vacations must take into account the needs of the business, e.g., seasonal operations, the availability of workers to stand in for those on vacation, workload, etc. They should also consider the needs/wishes of employees.

This recommendation contradicts the principle of flexibility cited in the executive summary of the *Federal Labour Standards Review Commission* report.

E. Termination of Employment

4. Pensions and Severance Pay

Commission Recommendations:

• ***The provisions of Part III that disentitle workers to severance pay if they are entitled to pensions should be reviewed in light of changes to the law and practice governing the age of retirement and the shift from defined benefit to defined contribution plans. The purpose of the review should be to ensure that Part III does not prematurely, unfairly or unnecessarily deprive older workers of severance pay. (R. 8.5)***

This recommendation cannot be implemented until the issues regarding termination of employment are effectively addressed. Once this occurs, our members would be prepared to revisit this issue.

I. Coverage Under Part III

1. Definition of “Employee” and “Employer”

Commission Recommendation:

• ***Part III should be amended to permit the Minister to enact regulations, on a general or sectoral basis, defining “employees”, “employers” and “employment”. These definitions should initially codify the current policies and jurisprudence under Part III. However, they should be reviewed from time to time to ensure that other workers who ordinarily perform substantially similar functions, under substantially similar conditions, to “employees” are covered by Part III. (R. 4.1)***

There is, to our members’ knowledge, no evidence of unscrupulous employers taking advantage of the lack of definitions to deny employees their rights under the *Canada Labour Code*. Creating more specific definitions may capture workers and commercial relationships that were not contemplated for coverage. It may also have the unintended effect of creating more detailed parameters allowing any truly unscrupulous employers to avoid their obligations. At present, the definitions applied by adjudicators and courts have sufficient flexibility to encompass workers needing protection.

Section II: Supporting Working Families

3. Length of Service Requirements for Maternity, Parental and Sick Leave

Commission Recommendations:

• ***Employees who do not meet the current length of service requirement under Part III, but who qualify for maternity, parental or sickness benefits under the Employment Insurance (EI) program should be entitled to maternity, parental or sick leave, as applicable.***

• ***An additional period of leave without pay should be provided under Part III to cover any period during which the employee is receiving—or is serving a waiting period before receiving—sickness benefits under the EI program. (R. 7.52)***

Probationary periods are often six months, so employees with less service should not be eligible for maternity, parental or sick leaves.

8. Leave for Family Victims of Crime

For discussion:

► ***Is it necessary to enshrine in legislation that employees should be given time off in the event that they or a family member is a victim of violent crime? If so, how much leave should be provided and under what circumstances? Should the right to leave also apply to a case where a spouse or child commits suicide, as it does in Quebec?***

► ***Should employees have the right to work on a part-time or intermittent basis during a period of leave?***

► ***Should employees have to complete a minimum length of service in order to be entitled to leave? Are there any reasons to disqualify an employee from the right to leave, such as contributing to the injuries suffered by the family member?***

Our members are not aware of evidence that this is an issue for employees. Therefore, there is no need to add further regulations to how employers and employees manage through these circumstances.

Section III: Smart Compliance

3. A New Adjudicative Structure

b) Hearing Officers

Commission Recommendations:

• ***A permanent roster of full- and part-time Hearing Officers should be appointed to hear appeals from the decisions of inspectors in certain cases and to perform adjudicative functions now undertaken by Referees and Adjudicators. Hearing Officers should possess knowledge of and experience in labour standards issues, labour law, industrial relations or related disciplines.***

Senior departmental field staff should be eligible for appointment, as well as arbitrators, tribunal members and persons who previously represented workers or employers.

• ***Hearing Officers should be paid at a level commensurate with their responsibilities; they should be well trained; they should be hired in sufficient numbers to enable them to perform their functions efficiently; and they should be deployed in accordance with a well-designed and carefully monitored strategy. (R. 5.10, 8.8, 9.14)***

While it is possible that a hybrid system under which Hearing Officers perform adjudicative functions now undertaken by Referees and Adjudicators would help streamline the process, this requires further study. It is not clear what the efficiencies and cost savings would be. Until it can be clearly demonstrated what efficiencies can be achieved by this recommendation, the Canadian Chamber of Commerce proposes that this recommendation not be enshrined in the *Canada Labour Code*.

4. Targeting Unfair Employment Practices

a) General Approach

Commission Recommendations:

• ***Enforcement procedures under Part III should be re-designed in order to secure higher overall levels of compliance, to achieve more efficient and effective remedies for workers whose rights have been violated, to ensure fairness in the enforcement process and to protect employers against frivolous and vexatious claims.***

• However, prosecutions should remain a practical and effective option for dealing with the most serious unfair employment practices. Maximum monetary penalties should be raised from \$5,000 to \$50,000 for a first offence; to a maximum of \$100,000 for a second offence; and to a maximum of \$250,000 for a third or subsequent offence. Each day that an offence continues should be deemed to be a separate offence. Individual employers and corporate officers should, in extreme cases involving deliberate fraudulent conduct or the use of threats or coercion, be liable to prosecution and imprisonment. (R. 9.20, 9.22, 9.23)

It is our members' view that those most likely to violate the Code are those least likely to be able to pay fines. Further study is required regarding the relatively few employers that violate the code and how to effectively deal with them.

For example, the criteria for judging "unfair employment practices" as outlined on pp. 98-99 of the Discussion Paper should be revised to reflect "having frequent findings of unjust dismissal."

5. Dealing with Other Part III Infractions

a) Limitation Periods

Commission Recommendations:

- Part III should be amended to establish a six-month limitation period within which complaints concerning unpaid wages or benefits must be initiated. The limitation period should run from the date on which the complainant discovers non-payment. The amendment should allow for the possible extension of the limitation period on defined grounds, including fraud or coercion.**
- Part III should be amended so as to set a 36-month limit on the period in respect of which the Labour Program collects unpaid wages. (R. T.5.3, T. 5.4)**

In our members' view, the establishment of any limitation period is welcome. However, further consultation is necessary due to the discretion involved in extending the limitation period.

7. Reporting Work-Related Violations

Commission Recommendation:

- Part III should be amended to provide that inspectors who have reasonable grounds to believe that an employer is violating the Canadian Human Rights Act or other work-related federal legislation be given discretion to notify the relevant authorities. (R. 6.9)**

Employees already have the right to pay equity if reasonable grounds are found. Privacy laws, which restrict the sharing of information, must be respected. Any exceptions must be very clearly defined by regulation.

Part B

These are recommendations our members believe should not be implemented because they are outside of the mandate of Part III of the *Canada Labour Code*; contradict the principles of flexibility and clarity in regulation and/or are covered in other legislation, e.g., the *Canadian Human Rights Act*.

D. Minimum Wages

Commission Recommendations:

- ***The federal government should re-institute a national minimum wage and should cease to set the minimum wage by reference to provincial standards. However, variations should be permitted based on documented differentials in the cost of living in different population centres.***
- ***The new national minimum wage should be benchmarked to the low-income cut-off (LICO) index or some similar standard, and should be adjusted automatically at intervals of one or two years. The formula for fixing and adjusting the national minimum should be set out in Part III itself, rather than in regulations.***
- ***In order to minimize dislocation in local labour markets, the new national minimum wage should be introduced in two phases. In the first phase, lasting two or three years, a national minimum should be established by gradually disengaging it from the lower province-based variants. In the second phase, lasting a similar period of time, the national minimum should be increased until it conforms to the benchmark proposed above. During both phases, adjustments should take into account cost-of-living increases. (R. 10.14)***

It is our members' view that there is no need for a national minimum wage. This issue is being appropriately addressed by provincial/territorial minimum wage legislation and should remain as such. Establishing a national minimum wage would create an additional administrative burden for employers and no real benefits for employees whose wages would have to be indexed to provincial/territorial indicators. It would also discourage employers from paying higher than the national wage, causing harm to some employees whose wages are equivalent to, or exceed, it.

E. Termination of Employment

2. Severance Pay for Long-Serving Employees

Commission Recommendation:

- ***Entitlement to severance pay should accumulate at the rate of three days' wages per year for workers with over 10 years' continuous service. (R. 8.3)***

Severance pay is not an "entitlement". It is intended to provide a bridge to employees as they seek other employment. It is not a reward for past service. There is no need to encode it.

F. Human Rights in the Workplace

2. Workplace Human Rights Committees

Commission Recommendation:

- ***The Labour Program and the Canadian Human Rights Commission, and the Ministers responsible for both, should discuss whether to leave in place the present Part III provisions dealing with sexual harassment, to expand these provisions to include harassment on other grounds forbidden by the Canadian Human Rights Act (CHRA) and/or other discriminatory employment practices, or to consolidate and administer all such provisions under the CHRA. They should also address a longstanding proposal for workplace human rights committees, either under Part III or under the CHRA.***

Appropriate legislative or administrative action should follow. (R. 6.5)

Our members strongly oppose any requirement to establish these committees. They would be administratively burdensome and a duplication of provisions of the *Employment Equity Act* which already require employers to consult with employees on employment equity issues. For smaller employers, these committees would represent a substantial hardship.

G. Education and Training

2. Training Bonds

Commission Recommendations:

• Employers should be permitted to require employees to post training bonds so as to ensure that they do not resign for an agreed period following completion of a training program for which the employer has paid. The terms of training bonds should be established by regulations under Part III. (R. 11.6)

Our members do not agree with this recommendation and are not aware of any demonstrated need for employees to post training bonds. In light of today's tight credit environment, it would discourage employees from undertaking training that could make them more productive.

H. Communicating with Employees

1. Written Notice of Employment Terms

Commission Recommendations:

- Employers should be required by regulation to provide employees who are not covered by a collective agreement with a written notice setting out their rates of pay, hours of work, general holidays, annual vacations and conditions of employment. The written notice should be provided at the time of hiring and updated each time material changes occur or at periodic intervals.**
- The notice should also briefly advise employees of the existence of the Canada Labour Code and direct their attention to a toll-free number and a website where they can obtain further information. The Labour Program should provide a sample or standard form notice that can be used or adapted to meet employers' requirements.**
- The notice should not be considered a contract of employment, but treated as prima facie evidence of the agreement between the parties. For the purposes of compliance proceedings under Part III, if the employer fails to produce initially, or cannot produce, a copy of the written notice of the terms of employment, the employee's recollection of the terms should be presumed accurate, unless the employer adduces persuasive evidence to the contrary. (R. 5.1-5.4)**

Our members agree that the requirement to provide employees outside of collective agreements with a written notice of employment setting out rates of pay, hours of work, etc., would pose an additional administrative burden on employers. They believe that "material change" needs to be defined. It is their view that employers and employees need to be able to manage their relationships with government intervening only if there are obvious problems.

There is already a requirement for employers to post notices regarding information about Part III of the *Canada Labour Code* and no additional regulations are needed.

I. Coverage Under Part III

2. Autonomous Workers and Independent Contractors

Commission Recommendations:

• A new category of “autonomous worker” should be established under Part III. “Autonomous workers” should be defined by Ministerial regulation as including persons who perform services comparable to those provided by employees under similar conditions, but whose contractual arrangements distinguish them from “employees.” Persons who provide services to or on behalf of employers, but who are neither “employees” nor “autonomous workers” should be clearly identified as “independent contractors” and expressly excluded from coverage under Part III. A definition of “independent contractor” should be provided by Ministerial regulation.

• To the extent necessary to protect their basic right to decent working conditions, and to protect the interests of employees from unfair competition, “autonomous workers” should be eligible for limited coverage under Part III. The Minister should have the power to enact regulations, based on sectoral input, specifying sector-specific criteria for “autonomous worker” status, and determining on a sector-specific basis which protections are to be extended to these workers.

• Employers should be required to provide employees, autonomous workers and independent contractors with a simple notice advising them of their status under Part III. This notice would be of no effect if the person so described meets the relevant statutory definition. If an employer fails to provide the notice, subject to written evidence to the contrary the worker should be presumed to be an employee under Part III. Furthermore, the use of coercion, undue influence or misrepresentation to cause a worker to accept the status of an independent contractor or autonomous worker should be considered a violation of Part III and the worker’s consent should be of no effect. (R. 4.2-4.7)

The recommendation of requiring employers to provide employees, autonomous workers and independent contractors with a “simple notice” of their status under Part III is unnecessary. It could also pose difficulties for workers who consider themselves independent contractors for tax purposes yet are “presumed” to be an employee under the *Canada Labour Code*.

Our members believe that employers being considered to have violated Part III of the *Canada Labour Code* if they fail to provide notice of employment status is punitive and unfair. Finally, they fail to see why separate definitions for independent contractors and autonomous workers are required as they are not employees.

3. Agency Workers

Commission Recommendation:

• Part III should make federally regulated enterprises jointly and severally liable with temporary employment agencies for non-payment of wages or benefits owing to agency employees who work in those enterprises. (R. 10.2)

It is our members’ view that federally-regulated employers should not be liable if temporary employment agencies fail to meet their obligations to agency employees for unpaid wages or benefits. Temporary agencies are regulated provincially/territorially and outside of the jurisdiction of the *Canada Labour Code*.

4. Temporary and Part-Time Workers

a) Temporary Workers – Consideration for Permanent Employment

Commission Recommendations:

- ***Employers should be required to provide temporary employees with a statement setting out the nature of the relationship, its anticipated duration, and the conditions—if any—under which the employee may be considered for permanent employment.***
- ***Temporary employees who have worked for an employer for continuous or non-continuous periods that cumulatively total one year — or longer if that is the normal probation period fixed by the employer for permanent employment in similar work — should be deemed to have completed the probation period and should be entitled to be considered for permanent employment on the same basis as probationers. The burden of proof of compliance with these requirements should rest on the employer. (R. 10.3-10.4)***

This recommendation would interfere with private arrangements between employers and employees and could have the unintended effect of increasing the vulnerability of temporary employees. As stated in the Discussion Paper, “...some employers may attempt to terminate the employment relationship before the one-year mark is reached...” (pg. 68) Employers need the flexibility to hire employees as permanent staff according to their needs and labour market trends. As employers compete for talent they will have to have permanent employment and its advantages, for example pensions and benefits, as options to attract and retain staff.

5. Benefits Bank

Commission Recommendations:

- ***The federal government ought to investigate a range of possibilities for providing benefits coverage to temporary workers, agency workers, self-employed persons and others presently without coverage. It ought specifically to consider establishing a “benefits bank” through which employment-related benefits coverage could be purchased by workers themselves or by their employers, as well as by other persons seeking coverage. This “bank” might be established by private insurance companies or organized by a public agency.***
- ***If coverage can be provided in a practical fashion, the Labour Program ought to revisit the issue of whether non-standard workers must be provided with benefits on the same basis as other workers employed by the same firm. (R. 10.7)***

The establishment of a national benefits bank would add yet another layer onto the cost and administration of benefits. This recommendation would be acceptable only if employer participation were voluntary and only if provided by private insurance companies allowing market forces to prevail. The provision of benefits to non-government employees is not an area into which the federal government should be wading.

Section II: Supporting Working Families

2. Long-Term Family Responsibility Leave (Compassionate Care Leave)

Commission Recommendations:

- ***Employees should be entitled to take compassionate care leave to provide care or support to a family member who is seriously ill or who has had a serious accident, regardless of whether the illness or accident is likely to be fatal in a given period.***

- ***The requirement that compassionate care leave be shared where two or more employees provide care to the same family member should be removed. Each employee should be entitled to the full period of leave. (R. 7.55)***

The current eight weeks allowed under Compassionate Care Leave should not be changed. Any uncertainty in the length of the eligible leave period would be hard for employers of all sizes to accommodate as they would have to hire replacement staff for indeterminate periods.

4. Flexibility for Parental and Maternity Leave

Commission Recommendations:

- ***Each parent of a child should be entitled to take the full duration of parental leave.***
- ***Employees should be entitled to divide parental leaves into two periods, provided that they give the employer sufficient notice.***
- ***Employees should be allowed to suspend their parental or maternity leave once, and postpone the remaining weeks of leave, if the child is hospitalized for a period likely to exceed two weeks. If for any valid reason the employer cannot reinstate the employee during the period of suspension, the employee should be entitled to an extension of leave that is equal to the period of the child's hospitalization. (R. 7.53, 7.54, T7.7)***

Our members strongly oppose this recommendation. As stated in the *Canada Labour Code*, the purpose of parental leave is “to care” for a new-born or adopted child/children. There is no need to provide both parents with full parental leaves, which could double the cost to employers.

Our members do not agree with giving parents the entitlement to suspend or postpone maternity or parental leaves due to the administrative issues related to/costs of hiring replacement employees. In addition, there is the lack of fairness this would mean to these workers. This would be particularly difficult for smaller employers.

Finally, our members believe there needs to be clarity in the definition of a “valid” reason for not reinstating an employee.

5. Time off for Nursing Mothers and Employees with Medical Needs

Commission Recommendations:

- ***Part III should provide for short breaks during working hours to afford nursing employees reasonable time off, without pay, to breastfeed a child and/or express milk on the work site. Similar breaks should also be available to employees who need them to inject medications or for similar medical purposes. Such breaks should be subject to operational considerations, but should not be unreasonably denied.***
- ***Employees should be entitled to time without pay for personal medical appointments. Employees should give reasonable notice to the employer and take reasonable steps to minimize the duration of their absence. (R. 7.59-7.60)***

Additional regulation is not required in what are essentially human rights requirements. If further detail is required it should be built into the *Canadian Human Rights Act*. There is a risk that if the *Canada Labour Code* is too prescriptive regarding time off for medical appointments, etc. employers could set caps that would leave employees with less flexibility than they have today.

A further complication with these recommendations is that they would only be practical in certain locations, e.g., an onsite daycare centre to accommodate breastfeeding mothers.

6. Right to Request Flexible Work and the Duty to Consider

Commission Recommendations:

- ***Employees should be provided a right to request, in writing, that their employer decrease or increase their hours of work, give them a more flexible schedule or alter the location of their work. The employer should be required to give the employee an opportunity to discuss the issue and provide reasons in writing if the request is refused in whole or in part. There should be no appeal of an employer's decision on the merits, although an employee could file a complaint if the employer has failed to adhere to the procedure.***
- ***The employer's obligation to respond to a request should be limited to one request per calendar year per employee. Employees should be entitled to invoke these provisions after completing one year of service with the employer. (R. 7.44-7.45)***

With situations and needs varying not only from employer to employer, but amongst employee groups working for the same company, this would create complexity and formality that is contradictory the principle of flexible and responsive employers.

Section III: Smart Compliance

1. Voluntary Compliance

Commission Recommendations:

- ***There should be a greater focus on proactive techniques for promoting voluntary compliance, including:***
 - o increasing the resources available for education and information;***
 - o providing stakeholders with materials, training and advice on Part III and labour standards;***
 - o inviting sectoral organizations and individual firms to voluntarily commit themselves to comply with Part III and other labour standards by drawing up appropriate codes;***
 - o broadening the membership of the Labour Program's Labour Standards Client Consultation Committee to include other stakeholders, including organizations that advise non unionized workers; and***
 - o creating a small audit unit to design convenient systems for keeping employment-related records and to conduct audits randomly or in response to complaints.***
- (R. 9.1, 9.2, 9.3, 9.4, 9.6, 9.7, 9.10, 9.18)***

Proactive compliance measures should not be enshrined in the *Canada Labour Code*. However, compliance measures could be written into an amended compliance policy. The promotion of voluntary compliance measures is attractive to employers that are already compliant and scarce resources should be focused on initiatives that would bear more productive results.

Increased resources for education and information, particularly targeted towards smaller employers, would be well placed and would help enhance compliance.

Stakeholders should be limited to employers and unions. Both are focused on the employee/employer relationship and have the required expertise and workplace understanding that NGOs do not.

2. A New Compliance Structure

Commission Recommendations:

- ***A Chief Compliance Officer should be appointed with the authority to deploy inspectors and other field staff, obtain legal advice and representation as required, order audits and investigations, secure statistical and other analyses of issues related to compliance, and conduct educational and informational campaigns. The Labour Program Inspectorate should be expanded, its procedures modernized and its powers enlarged. The Inspectorate should be strategically deployed under the overall direction of a Chief Compliance Officer.***
- ***The Labour Program should develop a strong in-house statistical and analytical capacity that will assist the Chief Compliance Officer in strategic planning as well as operational decision-making.***
- ***A small audit unit should be established under the direction of the Chief Compliance Officer to design convenient systems for keeping employment-related records and conduct audits randomly, as part of a proactive enforcement strategy, or in response to complaints.***
- ***The Labour Program should assemble a small legal staff mandated to perform the advocacy, negotiating and advice-giving functions required under the compliance strategy.***

(R. 9.8, 9.9, 9.10, 9.11, 9.12, 9.19)

It is our members' view that the Labour Program's audit authority is sufficient and should not be increased. With sufficient resources and increased educational capacity, regulatory changes would not be required to improve compliance.

5. Dealing with Other Part III Infractions

c) "Cease and Desist" Orders

Commission Recommendation:

- ***Inspectors and Hearing Officers should have the power to order offending employers to cease and desist from future violations. (R. 9.26)***

Cease and desist orders can have broad and serious consequences - including operational, financial and reputational - for an employer. Inspectors do not have the broad knowledge and access to process that a tribunal, such as the Canada Industrial Relations Board (CIRB) would have. Therefore, this power should be reserved for the CIRB.

Section III: Smart Compliance

9. Complaints from Unionized Employees

Commission Recommendation:

• *Violations of Part III in unionized workplaces ought in general to be dealt with through the grievance procedure and arbitration. However, this general approach should be subject to two exceptions: (a) when the employer's violation amounts to an unfair employment practice under Part III; and (b) when the union refuses to process the employee's complaint under Part III to arbitration. (R. 9.32)*

Employees should not have multiple avenues for pursuit at the same time. Complaints should be handled through the unionized process first then through the commission process.