

BC EMPLOYMENT STANDARDS COALITION

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March 27, 2019

Ms. Carol Bellringer
Auditor General of British Columbia
PO Box 9036 Stn. Prov. Govt.,
Victoria, BC
V8W 9A2

Dear Ms. Bellringer:

Re: BC Employment Standards Branch - Performance Audit Request

On behalf of the BC Employment Standards Coalition this is a request that your Office conduct a Performance Audit of the provincial government's Employment Standards Branch. This request has been endorsed by the following members of our Coalition:

Living Wage for Families Campaign
Unifor (the Union)
Migrante BC
Retail Action Network
Together Against Poverty Society (TAPS)
Dignidad Migrante Society
Vancouver Committee for Domestic Workers & Caregiver Rights
Vancouver & District Labour Council
New Westminster & District Labour Council
Canadian Centre for Policy Alternatives – BC Office
BC & Yukon Territory - Building & Construction Trades Council
Migrant Workers Centre

In 2011 diverse organizations and individuals came together in the Employment Standards Coalition to develop and advocate for model legislation that will modernize the BC Employment Standards Act, and reverse the many negative changes to the employment standards system of the past decade and a half that have increased the vulnerability of many workers to worsening conditions of employment and unchecked employer abuse.

The purpose of the Coalition is to promote and build public support for strong progressive employment standards legislation and adequately resourced proactive enforcement that responds to the needs of all workers for decent wages and working conditions in correspondence with BC's changing workforce and the modern need for balance between work, family, personal and civic life.

Why a Performance Audit Request?

The Employment Standards Branch has the statutory responsibility of enforcing the basic employment rights of workers as contained in the *Employment Standards Act* and the *Employment Standards Regulation*.

A series of policy changes and cuts beginning in 2002 caused a major breakdown in the Employment Standards Branch's ability to effectively carry out its responsibilities. This failure is manifest in the closure of 8 regional offices throughout the province, a 51% reduction in enforcement staff, the creation of significant administrative barriers to the filing of complaints by workers, especially the requirement to complete a "self-help" step before a complaint is accepted, and the absence of pro-active investigation and enforcement activities.¹

As stated in our 2017 and 2018 submissions to the new Minister of Labour, while changes to the *Act* require approval from the Legislature, changes to the *Regulation* and to administration of the *Act* by the Employment Standards Branch only require the approval of Cabinet or direction from the Minister of Labour. As the current model for complaints, investigations and enforcement are set out by regulation and internal administrative policy at the ESB, the Minister of Labour is in a position to enact immediate change in this regard. However, the Minister has not acted on needed changes to the way in which the ESB functions, and the Branch's failure to effectively enforce the *Act* continues as before the change in government.

Violations of workplace rights under the ESA have been recently documented by the BC Employment Standards Coalition in our 2017 report, *Workers' Stories of Exploitation and Abuse: Why BC Employment Standards Needs to Change*.² A total of 245 incidents were recorded, including: wage theft (not being properly or fully paid according to the provisions of the ESA) (89 incidents); verbal abuse and harassment (71 incidents); and, violations related to scheduling shifts, workload hours, leaves and breaks (53 incidents).³ In addition, the report documents a number of reports of barriers and negative experiences with the Employment Standards Branch complaints handling (16 incidents).⁴ These and other stories and experiences of employment standards enforcement advocates provide ample evidence of the failure of the ESB to effectively enforce the *Act*. This report is enclosed.

Since the publication of our 2017 report we continue to receive stories relating to employment standards complaints that are not being expeditiously investigated or resolved by the Employment Standards Branch. For example, within the past 6 months the Branch has failed to act expeditiously on the complaints of Guatemalan women temporary foreign farm workers formerly employed by Golden Eagle Farms in the summer of 2018 under 6 month contracts. On September 16, 2018 15 of these women

¹David Faurey, *Eroding Worker Protections: British Columbia's New 'Flexible' Employment Standards* (Vancouver: Canadian Centre for Policy Alternatives, 2005) at 53, Table 2.

²Longhurst & David Faurey, *supra*.

³*Ibid* at 11-12.

⁴*Ibid* at 51-53..

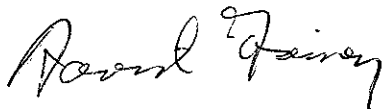
submitted complaints to the Branch that their contracts of employment had been violated in several ways. After they objected to the working conditions imposed by their employer in violation of their contracts of employment they were threatened with termination of employment before the end of their 6 month contracts and forced return to Guatemala. Although they did not receive more work they stayed in Canada under the threat of deportation as they were having great difficulty in obtaining new open work permits and wanted their employment standards complaints dealt with before returning home. These complaints remain unresolved for over 6 months. During this time they were without housing and income. There has been no communication from the Branch to the women or their representatives although their representatives have repeatedly asked the Branch for a report on their investigations.

Another recent example of the failure of the Branch to deal expeditiously with complaints is the case of a third party complaint against Cinesite Vancouver/Nitrogen Studios Canada, submitted on August 19, 2016, that the company was in violation of the Employment Standards Act in not paying its digital animation animators overtime pay as provided for in the Act. It took over two years for the Branch to investigate the complaint and render a decision that the employer had failed to pay overtime as required by the Act.

More stories of complaints being inadequately dealt with by the Employment Standards Branch can be provided if required.

We trust you will undertake the audit we are requesting.

Yours truly,

A handwritten signature in cursive script, appearing to read "David Fairey".

David Fairey & Chris Sorio
Co-Chairs, BC Employment Standards Coalition