BCESC

BC EMPLOYMENT STANDARDS COALITION

Response to Ministry of Labour

Employment Standards Act Consultation Paper

This response is based on previous submissions to the Minister of Labour and BCESC's *Critique of BC Law Institute Report on the Employment Standards Act* provided herewith. However, the BC Employment Standards Coalition is critical of the limitation of the Minister's consultation to the six thematic areas referenced in the consultation paper.

The consultation paper does not address a large number of provisions in the *Act* and *Regulation* that are either out of date or inadequate to address the rights and protections required by the growing body of vulnerable and precariously employed workers, such as with respect penalties for violations, employment agency licensing and regulation, minimum wage setting and elimination of farm worker piece rates, variances and exclusions, domestics and other caregivers under-regulation and exclusion, dependent contractors and misclassification, statutory holidays and entitlements, annual vacation, employment contracts, posting of the *Act* and *Regulation* in all work places, publication of determinations resulting from complaints and investigations, and responding to the growth of "gig economy" atypical employment relationships.

Theme 1 – Increasing protection of child workers:

As recommended by First Call, the BC Child and Youth Advocacy Coalition, we support completely replacing the child employment protection provisions in the *Employment Standards Act* with the following:

- The minimum age for formal employment of children be 16 (with exceptions for light work), consistent with the Canadian Government's ratification of ILO Convention 138 on the minimum age for employment, and Canada's commitment to 16 years of age and prohibition of hazardous work for those under the age of 18.
- A permit from the Director of Employment Standards be required for the employment of children under age 16.

- Prohibit the employment of children under the age of 12 with the exception of the entertainment industry and its current permit system.
- With respect to the employment of children and adolescents 12 to 15 years the government:

    - Develop lists of acceptable 'light work' including tasks and work places that do not threaten the health and safety, or hinder the education of children (12-13), younger adolescents (14-15, and older adolescents (16-17).
    - Place limits on the time-of-day for work, appropriate to age groups (e.g. prohibit late night and over-night work).
    - Place limits on the length of work time on a daily and weekly basis appropriate to age groups (e.g. no more than 4 hours per day on a school day for children).

- Ensure hazardous tasks and worksites are entirely off-limits to workers aged 16 – 17.

Theme 2 – Transforming the Employment Standards Branch:

Some of the strongest, most positive observations and recommendations in the BCLI report relate to enforcement of the *Act* to address the failure of the Employment Standards Branch to proactively and effectively enforce employment standards under the legislative and administrative changes introduced by the Liberal government in 2002. The report recognizes what numerous studies have concluded that "reactive, complaints based enforcement focused on resolving individual disputes does little to correct widespread patterns of non-compliance". The report's recommendations for change call for: 1) an end to the requirement that complainants must go through the "self-help" process before their complaints will be received, reviewed, investigated, mediated or adjudicated by the Employment Standards Branch (ESB); 2) restoration of the pre 2002 language in Section 76 of the *Act* requiring the Director of Employment Standards to investigate every complaint received; 3) a requirement that the investigating officer of the ESB summarize the findings of an investigation into a complaint in a report to the Director and that copies of the investigation report be given to the employer and the complainant, and given the opportunity to respond and be considered in making a determination; 4) a determination decision be made by the Director or delegate other than the investigating officer; and 5) the *Act* clearly permit a complaint to be filed on behalf of another person (i.e. a third person complaint). We support these recommendations.

However, the BCLI report does not address a number of important changes to the *Act, Regulation*, and way in which the Employment Branch operates in the following areas where we have called for action:

- Administrative procedures to enhance pro-active investigation and enforcement measures so as to give meaningful effect to the substantive rights and obligations in the *Act*.
- Mandatory posting of the *Employment Standards Act* and *Regulation* in all work places.
- Extension of the limitation period for filing a complaint from 6 months to 2 years.

- An administrative penalty provision to provide that if more than one employee is affected by a contravention the penalty is multiplied by the number of employees affected by the contravention.
- Determination decisions to be collected and made publicly available through the Employment Standards Branch website, as is the case for Residential Tenancy Branch decisions.
- Adopt statutory timelines for complaint resolution to ensure that complaints are resolved in a timely manner.
- Provide for escalating penalties for employers who fail to surrender documents as ordered by the Employment Standards Branch.
- An increase in the penalty for a second and third violation if such violations are within 3 years of the first contravention and any other provision of the *Act* is contravened, and increase the schedule of penalties by the rate of inflation increase since 2001.
- Provide powers to the Director of the Employment Standards Branch to enable the prosecution of employers who are found guilty of serious or repeated contraventions of the *Act*.
- Regulate the conduct of Licensed Employment Agencies similar to the way in which Licensed Farm Labour Contractors are regulated.
- Adopt the principle of equal treatment and equal pay. The ESA should ensure equal treatment for temporary agency workers performing work comparable to that of permanent workers, including equal pay, statutory and employer-sponsored benefits and working conditions;
- Require that all temporary agency workers be provided with written information about their employment rights; detailed information about the employment agency with which they are registered; and, for each assignment, a signed information document outlining the pay, hours, assignment duration and working conditions being offered;
- Provide certainty in the length of temporary agency assignments by requiring employment agencies to offer a new assignment at the same pay rate or compensation for lost pay if an assignment prematurely ends;
- Encourage transition to permanent employment by prohibiting "buy-out clauses" that impose a fee on client firms that wish to offer direct employment to temporary agency workers, and prohibit clauses that restrict such mobility; and,
- Implement the recommendations of the Changing Workplaces Review Special Advisors to the government of Ontario that temporary employment agencies be required to provide to their assignment workers notice with respect to the end of their assignment with a client, whether the termination was caused by the agency or the client, in an amount equivalent to the notice required under the ESA. If notice is not given, unless the employee is referred to work for other clients of the agency, termination pay is payable by the agency for the number of days equal to the amount of notice, which amount must be paid within 48 hours following the end of the assignment.

Theme 3 – Supporting families and job-protected leaves of absence:

The BCLI report contains a significant number of major negative/regressive ESA change recommendations from a majority on the Project Committee. With respect to job-protected leaves these negative/regressive recommendations include the following:

- That there be no new discretionary leave entitlements.
- That there be no paid sick leave provision. [The BC Employment Standards Coalition has called for the accrual of up to 52 hours (approx. 7 work days) of paid sick leave per year, with the benefit accruing at the rate of one hour for every 35 hours worked.]
- That only employees with 3 months continuous employment be eligible for any form of statutory leave other than annual vacation or jury duty or reservist leave. [The BC Employment Standards Coalition has called for the elimination of the length of service requirements for entitlement to all job-protected leaves. This is in line with the Government of Canada's recently announced amendments to the *Canada Labour Code* that will eliminate minimum length of service requirements for holiday pay, sick leave, maternity leave, parental leave, leave related to critical illness and leave related to death or disappearance of a child.]

In addition the BC Employment Standards Coalition has called for the following changes to the leave provisions:

- With respect to Family Responsibility Leave the definition of "immediate family" be replaced with "a person in a close, family-like relationship with an employee".
- The *Act* include a provision for paid domestic violence leave.

Theme 4 – Strengthening worker's ability to recover wages/monies owed:

An important element of an effective deterrence regime is the liability that employers should face with respect to the time limit of the unpaid wages they may be required to pay if found in violation of the *Act*. The BCLI report discusses limitation periods for filing a complaint and for the recovery of unpaid wages. Workers currently have six months to file a complaint with the ESB.[1] This timeframe is unfair to workers who may not have complete or accurate knowledge of their statutory rights, and is particularly prejudicial to temporary foreign workers, as discussed in the report. The BCLI review committee did not reach a consensus on this topic.

The BC Employment Standards Coalition advocates for extending the limitation period for filing a complaint at the ESB to two years for all individuals subject to the ESA. The two-year limitation period corresponds with the limitation period for general civil claims, giving workers equal access to legal remedies as other private litigants. A shorter limitation period would place workers at a disadvantage compared to private litigants, disabling them from enforcing their legal rights in the workplace in a manner equal to the enforcement of other legal rights.

Extending the limitation period enhances access to the complaints and hearing process, and better accommodates workers who may find themselves unable to file a complaint within the

[1] This limitation period runs from the date of the occurrence if the worker is still employed by the employer, or from the date of termination if the worker is no longer employed by the employer.

shorter time frame, due to a lack of or misinformation, illness or disability, urgent issues related to work, housing or immigration status, or other reasons. In particular, extending the limitation period will benefit migrant workers who may otherwise be barred from seeking legal remedy and recovery for work-related rights violations, especially where a worker has been charged recruitment fees.

In addition workers may only make a claim for unpaid wages covering 6 months before the date of complaint or termination of employment. Until 2002 the wage recovery period was 2 years. The BC Employment Standards Coalition advocates for extending the wage recovery period to 3 years as, here again, the 6 month time frame is unfair to workers who are unaware of their rights or who have been in a precarious employment relationship for an extended period of time, such as for temporary foreign workers.

Positive/progressive recommendations have also been made in the BCLI report with respect to wages and wage payments, including: 1) a new provision governing the ownership and distribution of tips and gratuities, the same as in the Ontario ESA; and 2) hand harvesting farm workers paid under a piece rate system should receive at least the equivalent of the general hourly minimum wage. We agree with the analysis and conclusion of the BCLI Consultation Paper (pp 96-100) on the tips and gratuities issue that some legislative protection of employees' proprietary rights in tips and gratuities and regulation of tip pooling is long overdue. However, we prefer the Newfoundland and Labrador legislation over the Ontario legislation (recommended by BCLI), but with some additional wording for the regulation of tip pooling to ensure that it is under employee control, such as the wording in Section 50 of the Quebec act respecting labour standards, as follows:

> *The employer may not impose an arrangement to share gratuities or a tip-sharing arrangement. Nor may the employer intervene, in any manner whatsoever, in the establishment of an arrangement to share gratuities or a tip-sharing arrangement. Such an arrangement must result solely from the free and voluntary consent of the employees entitled to gratuities or tips.*

With respect to the Farm Labour Contractor provisions and the liability for unpaid farm worker wages the minority have recommended repeal of Section 30(2) (producer excluded from liability) so that producers/farm operators are also liable for the unpaid wages of farm workers employed by Farm Labour Contractors. We agree with this recommendation.

There needs to be an end to the numerous exclusions for industries and occupations, especially those covering workers in low wage occupations and with precarious employment status, and workers covered by a union agreement.

There needs to be a universal approach to coverage under the *Employment Standards Act*, which effectively provides basic minimum standards for all workers. The starting point should be that all workers, regardless of type of work or industry, are entitled to minimum employment standards. As stated by the Ontario Changing Workplaces Review Special Advisors in their interim report, exemptions from the *Act* are inconsistent with the principle of universality – which is that minimum terms and conditions set out in the *Act* should be applicable to all employees.

A significant exclusion from the BC *Act* was made in 2002 when workers covered by a union collective agreement were completely excluded from its core provisions., reversing a recommendation for inclusion made by ESA review Commissioner Mark Thompson in 1993. As acknowledged in the BCLI Consultation Paper (p 40), this exclusion distinguishes the BC ESA from that of all other provinces and territories. However, without reference to the only significant research conducted on the serious negative impact of this exclusion[2] the BCLI project committee (p 41) has neglectfully made no recommendation on unionized worker exclusion. There is no principled basis to exclude unionized workers from the minimum protections of Act. All workers should be treated fairly under the law, and entitled to the same basic protections.

With respect the *Act's* coverage of workers employed in private residences and the exclusion of "sitters", a minority recommend that the definition of "sitter" be amended to be a person employed solely to attend to a child or adult for not more than 15 hours per week. We support this recommendation.

Other important changes called for by the BC Employment Standards Coalition and other organizations but omitted in the BCLI report include eliminating exclusions and providing equal treatment under the *Act* to all types of care workers regardless of whether they are classified as Domestics, Sitters, Residential Care Workers, Night Attendants, or Live-in Home Support Workers, and including Dependent Contractors in the definition of "employee", the same as in the *Labour Relations Code*.

Regarding the liability of company directors or officers for unpaid wages, a minority on the BCLI project committee recommended elimination of the liability exception for directors and officers if the company is insolvent or in bankruptcy proceedings and to restore the pre 2002 liability language in the *Act*. We support this recommendation.

Theme 5 – Clarifying hours of work and overtime standards:

Hours of Work Notices

As previously submitted to the Minister of Labour current scheduling provisions in the *Act* make it challenging for employees to balance personal, family and community needs with paid employment. Employers should be required to post work schedules two weeks in advance, including work and shift start and end times, and meal breaks scheduled during the work period.

We recommend that the pre 2002 section language be restored except that the minimum notice period be two weeks unless there is an emergency circumstance, in which case the minimum notice period is 24 hours, and notices must also be written in the first languages of those employees where a significant number in the workplace do not have English as their first language.

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[2] See David Fairey and Simone McCallum, *Negotiating Without a Floor, Unionized Worker Exclusion from BC Employment Standards,* (Canadian Centre for Policy Alternative – BC, July, 2007).

Employees should receive the equivalent of one hour's pay if the schedule is changed with less than a week's notice, and four hour's pay for scheduling changes with less than 24 hours' notice, regardless of the circumstances. Furthermore, employees must be able to ask employers to change schedules without penalty or fear of reprisal.

We support the BCLI recommendation that the *Act* be amended to require that if an employee is required to report for work, and the employee is scheduled to work more than four hours on the day, the employee must receive a minimum of four hours' pay if work starts, and a minimum of two hours' pay if it does not.

Family Friendly Work Scheduling:

We recommend that a new provision be added to this section of the Act to accommodate workers who have family responsibilities that make it difficult for them to adapt to work schedule changes, as follows:

> *If in the event of a planned shift schedule change, employees affected by such change must give their formal consent to the change before it can be instituted. Such affected employees will not unreasonably withhold consent but in any case family responsibilities will constitute a valid reason for withholding consent to a shift schedule change.*

Section 32 - Meal Breaks

A number of worker's stories received during our Workers' Stories Forums told of not being provided with adequate meal and refreshment breaks during their shifts, or that they are frequently required to work through their meal break without pay. Failure to provide meal breaks constitutes another form of wage theft because Section32 of the ESA requires that an employer must provide its employees with a 30 minute unpaid meal break after 5 hours of work. However, there is no provision for employees to be given a paid "coffee breaks" in the middle of each half shift – a benefit most unionized workers enjoy.

It is our recommendation that the title of Section32 of the *Act* be changed to **Meal and Refreshment Breaks,** and that there be two additions to this section as follows:

> *An employer who requires an employee to work or to be available for work during a meal break shall pay the employee double the regular wage for the ½ hour meal break worked.*
>
> *An employer must ensure that no employee works more than 7 hours in any shift, exclusive of a meal break, without two paid rest breaks of 15 minutes each (one rest break per half shift).*

Two paid refreshment breaks plus an unpaid half-hour lunch break is a reasonable response to workers' needs for breaks to refresh themselves and to conduct safe and productive work.

We note that there are no comparable recommendations for improvement to this section of the *Act* in the BCLI interim report.

Section 34 – Minimum Daily Hours

This section was changed in 2002 so that the minimum number of hours of pay to an employee required to report for work was reduced from 4 hours to 2 hours, whether or not the employee starts work (previously it was 4 hours pay if work had been started and 2 hours if work had not been started). And a minimum of 4 hours of pay was only preserved if the employee was previously scheduled to work for more than 8 hours. Also repealed was the requirement of a minimum of 2 hours of pay to school students reporting for work on a school day.

We recommend that the pre 2002 provisions be restored in full.

New Section: Minimum Weekly Hours – Temporary Foreign Workers

Currently migrant employees working in BC under temporary foreign worker programs have no guarantees that for the time that they are bound to work under contract for a designated employer for a period of months or years they will be paid for a minimum number of hours per week. Under this arrangement, employers of temporary foreign workers have the right to provide their workers fewer hours of work than their contract requires or to pay them for fewer hours than specified in the contract.

We therefore recommend the following new provision:

> *If an employee is working for a designated employer under a federal temporary foreign worker program the minimum number of paid hours of work per week of employment of the employee, regardless of the number of hours or days actually worked in any one week, shall be the greater of number of hours per week of work specified in the employer/employee contract or 35 hours.*

Section 35 – Maximum Hours of Work

This section was partially replaced/re-written in 2002 from overtime wages required to be paid after 8 hours per day or 40 hours per week, or if working a flexible work schedule covered by a collective agreement an average of over 8 hours per day or 40 hours per week to these provisions not being applicable if an employee is working under a new Section 37 individual Hours Averaging Agreement.

We recommend that all pre 2002 provisions under this section be restored, except that the section be prefaced with the Canada Labour Code Sections 169 and 171 language that:

a) the standard hours of work of an employee shall not exceed eight hours in a day and forty hours in a week; b) no employer shall cause or permit an employee to work longer hours than eight hours in a day or forty hours in any week; and c) an employee may be employed in excess of the standard hours of work but, subject to [restored] Sections 37and 38 [Flexible Work Schedules], the total hours that may be worked by an employee in any week shall not exceed forty eight hours in a week or such fewer total number of hours as may be prescribed by the regulations as maximum working hours in an occupation or industry.

In the alternative, establish a new higher standard based on 7 hours per day and 35 hours per week, where the above language becomes:

a) the standard hours of work of an employee shall not exceed seven hours in a day and thirty five hours in a week; b) no employer shall cause or permit an employee to work longer hours than seven hours in a day or thirty five hours in any week; and c) an employee may be employed in excess of the standard hours of work but, subject to [restored] Sections 37and 38 [Flexible Work Schedules], the total hours that may be worked by an employee in any week shall not exceed forty four hours in a week or such fewer total number of hours as may be prescribed by the regulations as maximum working hours in an occupation or industry.

Voluntary Overtime – New Provision

We appreciate the BCLI Project Committee's acknowledgement of our recommendation that employees have an unqualified right to refuse more than four hours of overtime in a week, other than in emergency situations. However, the Project Committee's recommendation of amending the *Act* to include limited rights to refuse overtime, based on the Arthurs Report, still denies the employee the voluntary right to refuse overtime. Employees should not face penalty or fear of reprisal for refusing overtime.

Our recommendation is to add a new section/subsection titled **Voluntary Overtime** (adapted from Saskatchewan Labour Standards Act, Section 12) as follows:

> *(1) Notwithstanding any other provision of this Act, no employer shall, without the consent of the employee, require an employee to work or to be at his disposal for more than 44 hours in any week, except in the case of emergency circumstances.*
> *(2) Where an employee refuses to work or to be at the disposal of an employer contrary to the employer's requirement under subsection (1) and where no emergency circumstances exist, no disciplinary action shall be taken against the employee by the employer.*
> *(3) In any prosecution alleging a violation of this section, the onus shall be upon the employer to prove that an emergency existed or that the employee was discriminated against for good and sufficient reason.*
> *(4) For the purposes of subsections (1) and (2), **"emergency circumstances"** means any sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer.*

Section 36 – Hours Free From Work

This section (subsection (1)(b)) was amended in 2002 from double time pay required to be paid if an employee is required to work during the per weekly 32 hour **free from work** period to 1½ times regular pay for such work.

We recommend that the pre 2002 double time pay provisions be restored.

Breaks Between Periods of Work (Split Shifts) - New Section

We recommend the following new section adapted from Saskatchewan Labour Standards Act, section 13.2:

> *(1) No employer shall require and employee to work or to be at the disposal of the employer for periods that are scheduled so that the employee does not have a period of eight consecutive hours of rest in any 24 hours, except in emergency circumstances within the meaning of [the Voluntary Overtime section above].*
> *(2) No employer shall take disciplinary action against an employee who refuses to work or to be at the disposal of the employer according to a schedule that does not allow the employee to have a period of eight consecutive hours of rest in a period of 24 hours where no emergency circumstances exist.*
> *(3) Payment of wages at an overtime pay rate by an employer does not constitute a defence to a charge alleging contravention of this section.*

Section 37 – Agreements to Average Hours of Work (previously Flexible Work Schedules for Groups of Employees Not Covered by a Collective Agreement)

The section Flexible Work Schedules for Groups of Employees Not Covered by a Collective Agreement was repealed and replaced in 2002 by a new Hours Averaging Agreements provision. Under the new provision employers are permitted to enter into hours averaging agreements with individual employees without ESB oversight for periods of 1, 2, 3 or 4 weeks to determine overtime pay eligibility. In addition these agreements are not registered with the ESB and are not subject to the approval of 65% of all employees in the workplace as was the case under the previous Section 37 provisions.

We disagree with the BCLI Project Committee's recommendation that the *Act* continue to have a provision on averaging of working hours. The overtime averaging provisions currently in the *Act* should be repealed.

We recommend that the pre 2002 flexible work schedules provisions of the ESA be restored, except that to obtain the approval of at least 65% of all employees to such a flexible schedule under subsection (c) a secret ballot vote of such employees be supervised by the Director of the Employment Standards Branch or designate.

Section 40 – Overtime Wages for Employees Not Under an Averaging Agreement (previously Overtime Wages for Employees Not on Flexible Work Schedules)

This section heading was changed in 2002 to Overtime Wages for Employees Not Under an Averaging Agreement and the provisions/rights substantially reduced. It had been titled Overtime Wages for Employees Not on Flexible Work Schedules. The requirement to pay double time wages for work over 11 hours per day was changed to double for work over 12 hours per day; the requirement to pay double time for work over 48 hours per week was repealed and not replaced; and the requirement that maximum hours of work at regular pay are reduced by 8 hours for each statutory holiday in the week and if a statutory holiday is worked such hours are not counted when calculating overtime pay was repealed and replaced with the requirement to

include the hours worked on a statutory holiday in the count of regular hours worked when calculating weekly overtime hours to be paid at overtime rates.

This section continues to require the payment of 1½ times the regular wage for work over 8 hours per day and/or over 40 hours per week.

We recommend that the pre 2002 overtime wages provisions be restored. In addition that this section provide that for employees who are regularly scheduled to work 7 or more hours and up to 8 hours each day and/or 35 or more hours and up to 40 hours each week, that overtime wages of 1½ times the regular wage will paid for all hours worked in excess of those regularly scheduled.

Section 41 – Overtime Wages for Employees on a Flexible Work Schedule

This section was repealed in 2002.

We recommend that the pre 2002 provisions be restored (consistent with the restoration of Sections 37 and 38).

Section 42 – Banking of Overtime Wages

Subsections (4) and (6), requiring the pay out of banked overtime wages within 6 months after the overtime wages are earned, were repealed in 2003.

We recommend that the pre 2003 provisions be restored.

Theme 6 – Improving fairness for terminated workers:

As stated by Professor Harry Arthurs in his 2006 Federal Labour Standards Review Report, rules for the termination of a worker's employment are critical to employment standards legislation because: "... a job is often a worker's most important asset, the source of his or her personal and family security, and a defining attribute of social status and self-image. To lay down the substantive and procedural rules for termination is to establish the social and economic worth of that asset."

Professor Arthurs also noted that if employers could fire employees without fear of legal repercussions, they could effectively override employment contracts and the rights granted by legislation.

In this context the BC ESA provisions regarding termination of employment are inadequate and out of date.

The *Employment Standards Act* requires an employer to give the employee written notice, compensation in lieu of notice, or a combination of the two. However, entitlement to written notice of compensation in lieu of notice only begins after 3 consecutive months of employment.

An employer does not have to give written notice or compensation for length of service to an employee who is terminated for "just cause". Workers can pursue protection from unjust dismissal through common law, however, this access to justice is typically only for higher income workers. Moderate and low income workers cannot afford the legal representation that is necessary in order to sue their employers for wrongful dismissal.

In Nova Scotia and Quebec, and for workers under federal labour standards legislation, there are unjust dismissal protections that allow employees to contest their termination and provide for a possible reinstatement by an independent arbitrator where no cause is found to exist. The intent of these statutory unjust dismissal protections is to prevent arbitrary and unfair terminations, to enhance job security, to avoid negative impacts on an employee who has been summarily dismissed, and provide remedies that include the possibility of reinstatement, a remedial authority not available through the courts in a wrongful dismissal suit.

In addition, in the recent case of *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29, the Court determined that non-unionized employees under federal jurisdiction cannot be dismissed from their employment without just cause. This decision provides a foundation for broader reconsideration of dismissal provisions in provincial jurisdictions.

In our *Workers' Stories of Exploitation and Abuse* (pp 30-31) we recommended the following improvements to the termination provisions of the *Employment Standards Act* :

- Eliminate the 3-month eligibility requirement for termination notice or pay in lieu of notice.
- Require employers to have "just cause" for terminating and employee's employment to protect workers from unjust dismissal.
- Require employers to have "just cause" for terminating and employee's employment to protect workers from unjust dismissal.
- Require employers to provide notice of termination, or pay in lieu of notice, where an employee is laid off, based on the total length of employment, including seasonal employees who have recurring periods of layoff beyond the 13-week layoff period.
- Implement an expedited adjudication process for workers who have been unjustly dismissed.

We recommend the adoption of the above proposals set out in the *Workers' Stories of Exploitation and Abuse* report. Specifically, we recommend that the ability of employers to terminate employees without cause be eliminated, following *Wilson*. "Just cause" will continue to include dismissal due to employee misconduct, as well as due to lay-off: where there is a lack of work or discontinuance of a function / job role. In the latter case of a lay-off, an employer should be required to provide notice of termination or pay in lieu of notice in line with the above recommendations.

The BCLI Project Committee could not reach a consensus on any substantive changes to the terminations provisions of the *Act*, especially with respect to whether the Act should provide for adjudication of complaints against wrongful dismissal, and whether the Section 65(1)(e) provision excluding construction workers from the termination provisions of the *Act* should be

eliminated. It is apparent that the majority on the BCLI Project Committee hold distinctly employer biased views on these issues and do not support progressive change.

We agree with the minority on the BCLI Project Committee that the *Act* should be updated and modernized to address wrongful dismissal and provide an administrative adjudication process for wrongful dismissal claims, and that the exclusion of construction workers from the termination provisions be repealed. In addition there should be an expedited adjudication process available to temporary foreign workers who have been wrongfully dismissed.

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