

BC EMPLOYMENT STANDARDS COALITION

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Submission to the Select Standing Committee on Finance and Government Services regarding the British Columbia Budget 2019 Consultation

The BC Employment Standards Coalition campaigns for decent wages, working conditions, and respect and dignity in the workplace. The coalition is comprised of individual members, representatives from worker and community legal advocacy organizations, public policy researchers, labour lawyers and volunteer advocates.

This submission calls for a 2019 provincial budget that will fund a significant improvement in the services of the Employment Standards Branch. The Employment Standards Branch, within the Ministry of Labour, has the statutory responsibility of enforcing the employment rights of workers as contained in the *Employment Standards Act* and the *Employment Standards Regulation*.

The Employment Standards Branch has failed to effectively carry out its responsibilities under the *Act* for over a decade. This failure is manifest in the closure of 8 regional offices throughout the province, a significant 51% reduction in enforcement staff, the creation of significant administrative barriers to the filing of complaints by workers, especially employee completion of a “self-help” step before a complaint is accepted, and the absence of pro-active investigation and enforcement activities.

To address the inadequacy of services to workers being provided by the Employment Standards Branch our Coalition made a submission to your committee in October 2017 recommending that the 2018 budget contain a significant increase in the Ministry of Labour budget for the Employment Standards Branch so that enforcement staffing can be increased to pre 2001 levels, plus a 25% increase corresponding to the growth of both employment and employment establishments over the past 16 years.

We pointed out to the Select Standing Committee that in 2008/09 expenditures for the Employment Standards Branch was \$11,423,390, however, by 2016/17 expenditures for the Branch decreased by \$3,568,390 to \$7,855,000. We pointed out that these budget and staffing cuts have reduced the Employment Standards Branch to an ineffectual service of the government at a time when the need for pro-active enforcement has increased with the growth of precarious employment across all sectors of the economy – but particularly in services.

We were encouraged when the Select Standing Committee issued its Report on the Budget 2018 Consultation in November 2017 in which it recommended with respect to Labour and Immigration programs (Recommendation #41) that there be ‘Increased funding to the Employment Standards Branch to enable proactive enforcement of

workplace standards and worker safety', citing the submissions of our Coalition and many of our members and partners.

However, in Finance Minister Carole James' provincial Budget 2018 Speech in the BC legislature on February 20, 2018 the only reference to employment standards was to "Increasing the minimum wage and setting the path to \$15 an hour."

To find any further information on the provincial government's plans for employment standards and the Employment Standards Branch one has to look at the Ministry of Labour's 2018/19 – 2020/21 Service Plan and Ministry of Labour Estimates that were tabled with the 2018 budget.

In the Ministry's Service Plan, under its "Strategic Direction and Alignment with Government Priorities" there is reference to Premier John Horgan's Mandate Letter to the Minister which included the direction to:

- Establish a Fair Wages Commission to support implementation of the \$15-per-hour minimum wage;
- Create a Temporary Foreign Worker Registry; and
- Update employment standards and ensure they are applied evenly and enforced.

In the section on Government Priorities, "to make life more affordable and to deliver the services that people count on", there is reference to "developing strategies to close the gap between the minimum wage and 'living wages'", and to "Providing timely, accessible and reliable service to British Columbians as they engage with the workers' compensation, employment standards and labour relations systems."

Under "Strategic Context" is reference to significant factors that were expected to affect the Ministry's operations during the 2018/19 – 2020/21 period, including:

- The anticipated release in 2018 of the British Columbia Law Institute review of employment standards and recommendations for reform of British Columbia's *Employment Standards Act* and its enforcement; and
- Recommendations provided by the Fair Wages Commission in respect to British Columbia's minimum wage rates, including recommendations in early 2018 on establishing a path to \$15-per-hour. Commencing in 2018, the commission will work to develop recommendations on addressing the gap between the minimum wage and a "living wage".

In the section on Goals, Objectives, Strategies and Performance Measures the first goal of the Ministry is to achieve "Modern, fair labour laws and standards that: reflect the changing nature of workplaces; support a growing sustainable and innovative economy; and ensure the province leads the country in the health and safety of its workers." And one of the ways this is to be achieved is by "Establishing a modern employment standards system that is applied fairly, is actively enforced and protects and supports vulnerable workers as they share in the prosperity of the B.C. economy."

The Service Plan then states that among the “Key Strategies” of the Ministry to reach the goal of labour laws and policy that are responsive to, and supportive of, the changing nature of the workplace are:

- Acting on the recommendations of the Fair Wages Commission regarding implementation of the \$15-per-hour minimum wage, other related minimum wage rates (e.g. liquor server wage), and narrowing the gap between minimum wage and “living wages”.
- Identifying and implementing opportunities to update and enforce employment standards to better reflect modern workplaces, including through review and consideration of the final report of the British Columbia Law Institute on British Columbia’s employment standards.
- Working towards creation of a Temporary Foreign Worker registry to help protect vulnerable workers from exploitation and to track the use of temporary workers in our economy.

With respect to the objective of ensuring “Compliance with B.C. labour and employment law” the Employment Standards Branch will be directed to “collect baseline data to determine the number of employers who are the subject of bona fide disputes under the Employment Standards Act in the same workplace within a 12 month period to determine if the Branch’s early intervention/dispute resolution processes could be adjusted to better encourage compliance”, the “Key Strategy” being to:

- Review Employment Standards Branch operations to identify opportunities for increased and/or improved enforcement practices, and to ensure that employment standards are applied evenly and enforced.

The significance of these ambiguously phrased goals, objectives and strategies can be judged in the final analysis by the projected Ministry expenditures on its operations.

The 2018/19 – 2020/21 Ministry of Labour Service Plan provides operating expenditure estimates for all its Labour Programs for the three fiscal years 2018/19, 2019/20 and 2020/21. However, its operating expenditure estimates for these three years do not tell us what the staffing compliment or the expenditures for the Employment Standards Branch will be. What it does tell us is that in 2018/19 total Labour Program expenditures will only increase by 11% over 2017/2018, and then be reduced by 2% in the following two years! We are advised that the only element of the Labour Programs 2018/19 budget that relates to Employment Standards is the creation of a Temporary Foreign Worker Registry.

In the related Ministry of Labour Expenditure Estimates document we find more budget detail, and that about 69% of Labour Program expenditures is for the Employment Standards Branch. In this document we find that expenditures on Employment Standards will only increase by 10.5% in the current fiscal year to \$8,745,000. This is significantly less than the expenditure on Employment Standards under the Liberal government in 2008/09, which was \$11,423,390! It is therefore disappointing and disturbing that in Finance Minister Carole James’ provincial Budget 2018 the November 2017 recommendations of the Select Standing Committee on Finance and Government

Services have been ignored with respect to the Employment Standards Branch budget, and that our submissions to the Minister of Labour on the need for immediate action for urgent changes to the *Employment Standards Act*, the *Employment Standards Regulation*, and the Employment Standards Branch enforcement regime have not been acted upon.

Effective Employment Standards Enforcement can be an Income Source for the Government

As provided in our Budget 2018 submission, wages secured by workers as a result of actions by the Employment Standards Branch is taxable income. This potentially results in millions of dollars in additional revenue for government. The Branch currently claims to be recovering approximately \$5,000,000 per year in workers' wages. This is a pittance compared to what used to be recovered when the Branch was actually in the business of enforcing the Act.

But much more significantly, a major focus of the Branch should be the underground economy. This includes failure to pay all wages owing, cash under the table, and even working for nothing more than a Record of Employment. A concerted effort to address these issues, besides being the right thing to do, could result in millions in additional tax revenue.

Around 2001 the Abbotsford based Employment Standards Compliance Team led by Manager Jim Walton, in consultation with Revenue Canada, did a thorough investigation on questions of Employment Standards, Employment Insurance, and taxes. Their report indicated that an audit of just the non-union construction industry in the Lower Mainland and Fraser Valley could result in additional tax revenues (to both levels of government) in the range of \$40,000,000. This was at a time when the budget of the Branch was approximately \$10,000,000. There is no doubt that today the returns would be even greater.

In Conclusion

Within the 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democratic Caucus, under the heading “Jobs, climate change and a sustainable economy that works for everyone”, is the commitment to:

Improve fairness for workers, ensure balance in workplaces, and improve measures to protect the safety of workers at work so that everyone goes home safely and that workers and families are protected in cases of death or injury.

Consistent with that commitment, one of the new government's five priorities contained in the July 18, 2017 mandate letter of the Premier to Minister of Labour Harry Bains is a direction to make substantive progress on the following:

Update employment standards to reflect the changing nature of workplaces and ensure they are applied evenly and enforced.

It is our submission that the Minister of Labour is not be able to carry out this mandate without a substantial increase in his 2019 budget for the Employment Standards Branch.

Respectfully submitted,

David Fairey & Deanna Ogle
Co-Chairs, BC Employment Standards Coalition

*DBF/
October 12, 2018*