TEAMSTERS CANADA RAIL CONFERENCE COMMENTS

Submission to the Federal Labour Standards Review Commission by the Teamsters Canada Rail Conference respecting proposed amendments to the Canada Labour Code, Part III

May 15, 2009

The Teamsters Canada Rail Conference

Teamsters Canada is a labour organization representing over 125,000 Canadians working in various sectors of industry across the country. Of this total, over 16,000 members work in the rail industry and are represented by the Teamsters Canada Rail Conference. The Teamsters Canada Rail Conference (TCRC) is the major negotiating partner in the Canadian rail industry and is a major bargaining agent for all operating employees at Canadian National Railway, Canadian Pacific Railway, as well as the majority of short lines in Canada.

The Teamsters Canada Rail Conference is committed to advance and promote improvements in all aspects related to the working environment, and to ensure that its members and all other workers are treated with dignity and respect. This can be achieved through improved labour standards.

The intent of this brief is to complement that which has already been expressed by other union stakeholders and is meant to emphasize a number of key points that may be somewhat distinct to the nature of the work performed by members of the Teamsters Canada Rail Conference. We note that although the Arthurs Report has identified many areas of deficiencies within Part III of the present code and provided substantive positive recommendations, there are other areas of the code that require additional attention. The TCRC therefore requests that the commission seriously consider our concerns in its deliberations and amend the regulations accordingly in its pursuit to achieve the modernization of the code.

We fully endorse the position that “Labour standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction is offered, accepts or works under conditions that Canadians would not regard as decent.”

In general the TCRC supports the recommendations contained in the submission of the Canadian Labour Congress relative to the proposed changes to Part III of the Canada Labour Code (CLC). For the most part we will follow the Consultation document highlighting those areas that we feel need to be addressed.

Page 12 of the Consultation document:

1. Overtime

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)

Canadian Labour Congress

The CLC supports the ability to take overtime pay as time off at the premium rate (7.40).

The TCRC agrees with the Canadian Labour Congress on this issue.

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)

Canadian Labour Congress

The definition of emergency should be narrow, and related to potential death and injury of a person or for the safety of the public.

The TCRC agrees with the commissions recommendations. We do however have concerns as to what constitutes an emergency. The TCRC fully endorses the wording of the Canadian Labour Congress definition of emergency which states:

The definition of emergency should cover significant and immediate threats to human life and health and safety, and if extensive damage to property could have a significant and immediate threat to human life and health and safety, it should be included. But the sole threat of extensive damage to property should not be exclusive criteria to include it as an emergency situation, unless a state of emergency has been called by the authorized authority.

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)

The TCRC recommends that the code include personal time for a personal break of 15 minutes to be allowed after two hours of work. In addition a 30 minute break to be taken prior to the expiration of the fifth hour. Another 15 minutes personal break be allowed between the sixth and seventh hour. Special rules could be allowed by regulation or collective agreement. The definition of emergency should be narrow and limited to

potential death or injury of a person or a danger to the public. Meal breaks should be paid if employees are not permitted to leave the company property during meal break periods.

For example some train crews (passenger and freight) presently are not allowed personal time due to train operations. (Schedules for inter-city passenger service are created with no time allotment for crew personal time/lunch breaks)

2. Meal Breaks and Rest Periods
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)

The TCRC of the opinion that the weekly rest period should be increased to 48 consecutive hours unless specified by permit or collective agreement.

3. Shiftwork
Commission recommendations:

• 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)

The TCRC is of the opinion that 24 hours advance notice of shift changes should be a minimum under the code.

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

• 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)

The TCRC is of the opinion that Managers, Superintendents, and Professionals should not be exempted from the provisions of the Part III of the Canada Labour Code. The TCRC can document numerous occasions where management are required to work their regular hours and then may be further required to perform the duties of operating employees in the field in Safety Critical Positions. This poses a serious concern for the safety of the workplace and impacts on the safety of the public in relation to freight and passenger operations.

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).

Canadian Labour Congress:

In the review process, the CLC opposed proposals for "flexibility" which would remove or dilute protection and access to Code enforcement provisions for workers, and raised concerns over the current widespread use of non-transparent Ministerial permits to vary standards. Often, workers are not aware that a permit has been applied for by an employer or renewed, and some permits have been in place for many years without review. We argued that permits to work long work schedules and similar variations of standard provisions may be needed to take account of very specific circumstances, but should be subject to approval by Inspectors, regular and transparent reviews, and approval by affected workers.

The TCRC supports the position of the Canadian Labour Congress on this matter.

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)

The TCRC is opposed to expanding the definition of emergency to include urgent and essential work to "assist customers facing similar emergencies". This would make it all but impossible to enforce and monitor abuse of the regulations.

5. Mechanisms to adjust working hours

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)

TCRC – Any averaging agreement or modified work schedule should only be put in place with the agreement of the majority of employee through a secret vote.
The TCRC is also of the opinion that the railway hours of work / mandatory rest regulations should be regulated by HRSDC only. By its nature these regulations apply to hours of work and therefore should be enforced by the Labour Branch.

5. Mechanisms to adjust working hours

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)

Canadian Labour Congress:

The CLC finds recommendations 7.20 to 7.30 for flexibility of work schedules in non-union workplaces to be determined through Workplace Consultative Committees very problematic. These add to the dangers of sectoral conferences in that there would be no independent worker voice in the process. We recognize that Professor Arthurs has put forward a number of safeguards. However, variation through a reformed permit process would be much less open to employer manipulation, much less likely to undermine the collective bargaining process in other firms, and much more in the interests of non-union workers who would lack a real voice in the process. The experience of health and safety committees has been that they are generally ineffectual, and ineffective in non-union workplaces.

The TCRC supports the position of the Canadian Labour Congress. The TCRC also notes that in the "Preamble" the Part I of the Canada Labour Code, the Code presently supports negotiation through collective bargaining.

The Code states in part:

> **"AND WHEREAS Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations;"**

This negates any need for workplace-level consultative committee.

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 Minister should also be required to convene a sectoral conference before implementing any future regulatory provisions directed at "classes of employees" or sectorally-based categories of employers.

• In convening a sectoral conference, the Minister should have the discretion to define the boundaries of the sector, to set the agenda for the conference and to determine who is an interested party. The Minister would appoint a Chair for each sectoral conference, who would hold the title and exercise the powers of a Commissioner under Part III. The Chair would prepare a report advising the Minister as to whether proposed adjustments to labour standards should be implemented, or whether some other approach should be proposed with regard to the issues giving rise to the conference. The Minister would have the discretion to accept or reject the recommendations of the Chair, in whole or in part. Recommendations that are accepted by the Minister should be implemented by a regulation that would have the force of law.

• The process to establish new exemptions or special rules regarding hours of work or otherlabour 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).

Canadian Labour Congress

Commissioner Arthurs proposes a sectoral standard setting as an alternative to the current system of special exemptions and permits (7.12). As he lays it out, sectoral conferences would be convened, and recommendations would be drawn up by an independent chair and given to the Minister for consideration. One concern here is that the scope for variation of standards via a sectoral conference appears to be not limited to work schedule issues, but could extend to new areas. We would be opposed to this. Any scope for variation of standards must be very clearly defined in the statute, and limited to work schedules and some reasonable provisions for variation of paid holidays. Our preference would be for a reformed system for issuance of permits which is transparent and subject to close regulatory oversight. The sectoral standard-setting process which is proposed is problematic in that it would almost certainly be tilted toward flexibility as defined by and in the interests of employers. There would be no meaningful voice in the process for non-union workers, and the union voice would likely, at best, be a minority one. Labour's past experience of sectoral standard-setting processes has been that they can start a process whereby non union employers, with the manipulated consent of non-union workers, undermine standards to the detriment of unionized, and indeed all, workers. Moreover, sectoral standard setting is problematic in that the conditions of workers in a "sector" such as airlines or banking vary a great deal from occupation to occupation (e.g., attendants and mechanics in airlines). While flight attendants' schedules may indeed have to be modified by the realities of long flight times, the same is not true of other airline occupations. Finally, the consequences of sectoral standard setting for collective bargaining have to be thought through in much greater detail. A sectoral standard could clearly undermine negotiated provisions on work schedules and overtime pay which work for both employers and workers in a specific company within a sector, and could lead to some trading off of one standard for another.

The TCRC agrees with the position of the Canadian Labour Congress on this recommendation.
Further, the TCRC is of the opinion that regulatory exemptions for hours of work should be reviewed at least every five years.

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)

Canadian Labour Congress:

We said that paid vacation should be increased from just two weeks to at least three weeks after one year, and four weeks after 10 years. Arthurs calls for three weeks after five years (and a third unpaid week on request for those workers with less than five years), and four weeks after 10 years (7.6 1; 7.62). These are positive steps forward.

The TCRC agrees with the position of the Canadian Labour Congress on this issue.

Page 35 of the Consultation document states:

2. Waiver of Vacation Leave
Commission Recommendations:

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

Canadian Labour Congress

No waiver should be allowed into the legislation for health and safety/work-life balance reasons. The current regulations allows waivers. A waiver should only be requested by an employee, and it should be approved by both the employer and Labour Canada.

The TCRC agrees with the position of the Canadian Labour Congress on this issue.

Page 36 of Consultation Document.

> **3. Division of Vacation Leave**
> ***Commission Recommendations***
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> • 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)

Page 17 of Canadian Labour Congress document.

> **Canadian Labour Congress**
>
> If employees have to divide up their vacation throughout the year, they may not fully benefit from their having annual holidays. Division should be at the employee's premise and could be more acceptable if annual holidays were increased to three and four weeks as we recommended. Even then, employees should be entitled to at least two continuous weeks per year, unless they request otherwise.

The TCRC supports the position of the Canadian Labour Congress on this issue.

Page 37 of Consultation Document.

> **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.
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> • 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)

Page 18 of Canadian Labour Congress document

Canadian Labour Congress

An employee should have the right to postpone or interrupt their vacation when on leave recognized under Part 111. No other conditions than those already in the Code, like conditions under Compassionate Care Leave, should be required.

The TCRC supports the position of the Canadian Labour Congress on this issue.

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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)

Page 19 of Canadian Labour Congress document

Canadian Labour Congress

Substitution is feasible in a 24-hr/365-day a year operation, but less attractive in a workplace normally closed on general holidays. We would support greater flexibility and substitution if vacation time would be increased to three or four weeks a year. Employees working in workplaces closed on general holidays should be entitled to be on leave with pay, using vacation time to take holidays for religious or cultural purposes.

The TCRC supports the position of the Canadian Labour Congress on this issue.

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2. Simplifying the Calculation of General Holiday Pay
Commission Recommendations:

• While the length of service requirement to qualify for general holiday pay should be maintained, the obligation to work a minimum number of days in a given period should be repealed.

• A single formula should be used to calculate general holiday pay. Employees should be entitled to an amount equal to their regular wages earned in the four complete work weeks preceding the week in which the holiday occurs, divided by 20.

• For those employees who are paid at least in part by commission, general holiday pay should be equal to wages earned in 12 weeks preceding the week on which the holiday occurs, divided by 60. If the employee has less than 12 weeks of service, general holiday pay should be calculated in the same way as for non-commission employees. (R. T7.4, T7.5)

Page 41 of Consultation document

3. Method of Compensation for Holiday Work
Commission Recommendations:

• 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)

Page 19 of Canadian Labour Congress document.

Canadian Labour Congress

The employee should have the right to decide between Option A or Option B. In the case of Option B, the leave should be taken within a specified period of time, like within three months, unless the parties, or the collective agreement specify otherwise.

The TCRC supports the position of the Canadian Labour Congress on this issue. In addition should an employee work subsequent shifts on the holiday each subsequent shift

will be paid for at time and one half plus a day off or a days pay for each subsequent 8 hours worked or part thereof.

Page 43 of the Consultation document

> **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.
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> • 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)

Page 20 of the Canadian Labour Congress

> **Canadian Labour Congress**
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> Labour argued that the federal government should create a national minimum wage by reintroducing a federal minimum wage in its own jurisdiction set at what is needed to bring a single, fulltime, full-year earner to the poverty line (approximately $10 per hour), and should be indexed to average hourly wages. Arthurs broadly supports this recommendation (10.14), and accepts the key principle that the minimum hourly wage should match a poverty-line standard. This is an important recommendation which will have an important influence on

provincial minimum wages, and will directly benefit some federal sector workers.

The TCRC fully supports the position of the Commission and Canadian Labour Congress on this issue.

Page 45 of the Consultation document

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)

Page 21 of the Canadian Labour Congress document.

Canadian Labour Congress

Employees should not have to give notice to the employer of their intention to quit, nor should employers be entitled to any financial compensation when an employee leaves. The consequence of resignations are such, like inaccessibility to EI, that employees taking such radical actions have reasons that don't need to be justified and penalized. And the proposed notice and penalty could significantly reduce mobility in the labour force by creating limits in the mobility of employees between workplaces.

The TCRC supports the position of the Canadian Labour Congress on this issue. The TCRC is also of the opinion that an employee should never incur any financial penalties associated with termination of employment and employee financial penalties should not be included in the Code.

Page 47 of Consultation document

> **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)

Page 22 of Canadian Labour Congress document

> **Canadian Labour Congress:**
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> Arthurs calls (8.3) for a small improvement in severance pay (from two to three days per year of service after 10 years), and (8.5) accepts broadly that severance pay should not be reduced by a pension entitlement. This is an important point which should be clarified in legislation.

The TCRC agrees with the recommendation of the Commission and Canadian Labour Congress on this issue.

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> **3. Employees who Resign after Receiving Notice**
> ***Commission Recommendations:***
>
> • Workers who quit after being given notice of termination or layoff by their employer, but prior to the expiration of such notice, should forfeit any unpaid termination pay, but retain the right to severance pay. However, if they are discharged for just cause, they should forfeit their right to both termination pay and severance pay. (R. 8.4)

Page 22 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
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> The current proposal is a step in the right direction. Severance should never be taken away from employees.

The TCRC supports the position of the Canadian Labour Congress on this issue.

Page 49 of Consultation document:

> **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)

Page 23 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
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> Again, severance pay is a form of differed pay that should never be taken away from employees. This is an important point which should be clarified in legislation.

The TCRC supports the position of the Canadian Labour Congress.

Page 50 of Consultation document:

> **5. Group Termination of Employment**
> ***Commission Recommendations:***
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> 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:
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> - 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)

Page 23 of the Canadian Labour Congress document:

Canadian Labour Congress

Arthurs (1 1.2) essentially calls for little change to group termination provisions, though with administrative improvements.

The TCRC agrees with the Commissions recommendations on this issue.

Page 51 of Consultation document:

1. Preventing Bullying and Abuse
Commission Recommendations:

- The federal government should modify its language in pending regulations on actual or apprehended workplace violence to include serious harassment, bullying and abuse.

- Part II of the *Canada Labour Code* should be amended to define abuse, bullying or harassment in the workplace as an occupational hazard, and to establish appropriate procedures for forestalling and responding to such conduct. (R. 6.10-6.11)

Page 24 of the Canadian Labour Congress document:

Canadian Labour Congress

We argued that legislation should require employers to establish formal procedures to deal with complaints of psychological and racial harassment (based on the Quebec model), and to establish joint workplace human rights committees to ensure compliance with human rights legislation, and to promote a workplace free of discrimination and harassment. The latest regulations adopted in Part **I1** meets some of these goals.

The TCRC agrees with the Canadian Labour Congress. We would also like to add that timelines should be set for the setting up of committees to deal with these issues.

Page 52 of Consultation document:

> **2. Workplace Human Rights Committees**
> ***Commission Recommendations:***
>
> 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)
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> Page 25 of the Canadian Labour Congress document:
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> **Canadian Labour Congress**
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> For the labour movement, the important point is that effective mechanisms must exist in the workplace to deal with and speedily resolve complaints of harassment and violations of human rights. The discussions Arthurs calls for should not be taken a s an excuse to defer the issue, but rather as a genuine process to find the most effective mechanisms.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 53 of Consultation document:

> **1. Pay for Required Training**
> ***Commission Recommendations:***
>
> Employers who require their employees to attend training sessions should pay during their participation. (R. 11.5)
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> **Page 25 of Canadian Labour Congress document:**
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> We agree with the current recommendation. Not to be amended.

The TCRC also agrees Canadian Labour Congress on this issue.

Page 54 of Consultation document:

> **2. Training Bonds**
> ***Commission Recommendations:***
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> 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)
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> Page 25 of Canadian Labour Congress document:
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> **Canadian Labour Congress**
>
> Arthurs (11.5) would require employers to pay for required training (which does not always happen), but would also allow employers to require that employees forfeit a bond if they quit after paid training. Investing is a risk and we should not let employers get a guaranty of return on their investment by putting employees in a financial prison. Like a financial penalty if no notice is given, this kind of measure would limit mobility in the labour market.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 55 of Consultation document

> **3. Education Leave**
> ***Commission Recommendation:***
>
> Employees should be entitled to take unpaid education leave of up to five days per year at a time mutually agreed with their employer.
> (R. 11.7)
>
> Page 26 of Canadian Labour Congress document:
>
> **Canadian Labour Congress**
>
> Arthurs calls for a right to unpaid training leave of up to five days per year (1 1.7). This is an important first step, which at least recognizes the need for employer accommodation of individual learning needs. As noted, he also recognizes the need for

employers to respond to individuals' education and training schedules.

The TCRC fully agrees with the Canadian Labour Congress on this issue.

Page 56 of Consultation document:

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)

Page 27 of Canadian Labour Congress document:

Canadian Labour Congress

Arthurs proposes that a clear definition of employee be included in the regulations of the Code, and that anyone hired be given clear notification of their status, with a default status of employee recommendations with which the CLC is in general agreement.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 59 of Consultation document:

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)

Page 28 of Canadian Labour Congress document:

Canadian Labour Congress

Money deduction should never be used for disciplinary measure for any reasons. There are just too many possibilities where employers would use it as a measure of extortion or reduction of labour cost.

The TCRC agrees with the Canadian Labour Congress. Further, if this recommendation is implemented an appeal process must be established.

Page 61 of Consultation document:

> **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)

Page 28 of Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> We support this approach. A percentage would be easy to apply, like many collective agreements do for non-full-time or permanent employees.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 62 of Consultation document:

> **1. Definition of "Employee" and "Employer"**
> ***Commission Recommendations:***
> • 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)

Page 29 of Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> Arthurs proposes that a clear definition of employee be included in the regulations of the Code, a recommendation with which the CLC is in general agreement.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 63 of Consultation document:

> **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)

Page 30 of Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> A key recommendation is that dependent contractors could be covered by some but not all provisions of the Code through a new definition covering "autonomous workers" (4.2), implemented via

> regulations or a sectoral conference. Yet, such persons-those working under contract for a single employer on a continuing basis, and under the direction and control of the employer-would likely be considered to be employees under the current law, and are considered to be employees for collective bargaining purposes under Part I. Thus the recommendations on autonomous workers could be considered to be ones which dilute current coverage of dependent contractors, potentially undercutting the position of workers in sectors (like trucking) where many dependent contractors are employed. This is an issue of serious concern. It would be our preference to explicitly cover dependent contractors for Part 111 purposes, with any exclusion clearly specified and justified.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 65 of Consultation document:

> **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)

Page 31 of Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> Arthurs supports our call for employer/agency joint and several responsibility for ensuring minimum standards for agency workers (10.2). However, (10.1) he calls only for development of a voluntary code of conduct to deal with other key issues for temporary agency workers, such as their exclusion from consideration for permanent jobs.

The TCRC is of the opinion that the Federal government should, in as much as it is possible, include temporary workers under Part III of the Code. Also, the Code should regulate temporary workers the same as permanent workers unless impossible to do so.

Page 68 of Consultation document:

> **4 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)

Canadian Labour Congress made no comments for 4 a)

The TCRC agrees with the Commission on this issue.

Page 70 of Consultation document

> **4 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)

CLC made no comments for 4 b)

The TCRC agrees with the Commission on this issue except that the interval between successive periods of service should be 90 days instead of 60 days.

Page 71 of Consultation document:

> **4 c) Equal Pay for Temporary and Part-Time Workers**
> ***Commission Recommendations:***
> • Part-time workers should receive the same pay as full-time workers with equivalent jobs.
>
> • Temporary employees who have worked for the same employer for periods that cumulatively total at least one year should have access to the same pay that the employer provides to other employees with equivalent jobs, length of service and abilities. (R.10.5-10.6)

Page 33 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> The CLC called for a major focus on coverage of precarious workers, including part-time, and temporary or contract workers. Overall, the recommendations in this area are positive. We called for equal pay for part-time and contract workers performing the same work as full-time employees. Arthurs (10.4-10.6) recommends equal pay for equal work (for part-timers and after one year for temporary workers), and equal access to rights under Part 111 for temporary workers after one year (which can be attained via cumulative and not necessarily sequential contracts). This would provide for access to leaves and to provisions regarding unjust dismissal.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 72 of Consultation document:

> **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)

Page 34 of Canadian Labour Congress document:

Canadian Labour Congress

We called for better access to benefits for temporary and contract workers. Arthurs suggests consideration be given to a special benefit bank for nonstandard workers (10.7). This would be a useful initiative, building on some union initiatives to extend benefit coverage to workers who frequently move from employer to employer in the same sector.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 73 of Consultation document:

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)

Page 34 of Canadian Labour Congress document:

Canadian Labour Congress

Part III of the Code should ban dangerous work for workers under the age of 18, and provide other protections for workers under the age of 18 in accordance with convention 138 and 182 of the ILO.

The TCRC agrees with the Canadian Labour Congress on this issue. In addition the TCRC recommends that HRSDC employ health and safety officers specially trained and specifically assigned to monitor employers who employ children under the age of 18.

Page 75 of the Consultation document:

> **1. Short-Term Family Responsibility Leave**
> ***Commission Recommendations:***
>
> • Employees should be entitled to take up to 10 unpaid days of leave per year to meet responsibilities regarding the care or education of a child, or the health of a family member. Unused leave should not be carried forward from year to year. At the request of the employee, and with the consent of the employer, leave could be divided into periods shorter than one day. (R. 7.50)

Page 34 of Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> We argued that all workers should have the right to a time bank allowing them to take up to 10 paid days with pay per year to deal with personal and family responsibilities. In an important recommendation (7.50), Arthurs supports up to 10 unpaid days to deal with family responsibilities.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 76 of Consultation document:

> **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)

Page 35 of Canadian Labour Congress document:

Canadian Labour Congress

We welcome these recommendations as is.

The TCRC also welcomes these recommendations.

Page 78 of the Consultation document:

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)

Page 35 of Canadian Labour Congress document:

Canadian Labour Congress

We welcome these recommendations as is.

The TCRC also welcomes these recommendations.

Page 80 of Consultation document:

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)

Page 36 of Canadian Labour Congress document:

Canadian Labour Congress

We welcome these recommendations as is.

The TCRC also agrees with the Commission's recommendations.

Page 82 of Consultation document

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)

Page 37 of Canadian Labour Congress document:

Canadian Labour Congress

We welcome these recommendations as is. Arthurs makes positive recommendations to expand rights to unpaid leave for bereavement

leave (to seven days); court appearances; to deal with pandemics; and to attend medical appointments (7.56; 7.57; 7.60). These are welcome, and it is appropriate that these remain a separate right to leave.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 84 of Consultation document:

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)

Page 38 of Canadian Labour Congress document:

Canadian Labour Congress

We welcome the goals of these recommendations, but doubts it does have enough strength to have any significant impact on worklife balance of non-unionized employees.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 86 of the Consultation document:

> **7. Bereavement Leave**
> ***Commission Recommendations:***
>
> • The duration of bereavement leave should be increased from three to seven days.
>
> • Employees who meet the current three-month length of service requirement should be entitled to pay during the leave for the first three regular working days that occur during the leave period. The balance of the leave would be unpaid.
>
> • Employees should be entitled to start bereavement leave on any day, provided that the leave accommodates the day of death or the funeral. Employees should also have the discretion to postpone some part of bereavement leave, for the purpose of organizing or attending a funeral at a later date. (R. 7.51)

Page 38 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> Arthurs makes positive recommendations to expand the right to unpaid leave for bereavement leave (to seven days).

The TCRC agrees with the commission and the Canadian Labour Congress on this issue. In addition persons for whom bereavement leave will be allowed should be stated in the code.

Page 89 of the Consultation document:

> **9. Court Leave**
> ***Commission Recommendations:***
>
> • Employees should be entitled to take unpaid leave while they attend court proceedings as a party, witness, or juror. The employer should be provided with reasonable advance notice of the leave. (R. 7.56)

Page 39 of the Canadian Labour Congress document.

> **Canadian Labour Congress**
>
> We welcome these recommendations as is.

The TCRC welcomes these recommendations also.

Page 90 of the Consultation document:

> **10. Public Emergency Leave**
> ***Commission Recommendation:***
>
> • Part III should be amended to provide the Governor in Council with the authority to make regulations that allow defined classes of workers to take job-protected, unpaid leave in the event of a public emergency such as a natural disaster or pandemic. (R. 7.57)

Page 39 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> We welcome these recommendations as is.

The TCRC welcomes these recommendations also.

Page 92 of Consultation document:

> **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;
>
> - providing stakeholders with materials, training and advice on Part III and labour standards;
> - inviting sectoral organizations and individual firms to voluntarily commit themselves to comply with Part III and other labour standards by drawing up appropriate codes;

- 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

- 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)

Page 41 of Canadian Labour Congress document:

Canadian Labour Congress

The CLC has argued that greater resources should be given to Labour Canada so that Inspectors can educate employers and workers; that the Code should be actively promoted through popular educational materials, workplace visits, etc.; that government support should be given to community-based organizations to publicize and to help provide access to labour rights, including through expert representation before tribunals; and that third-party complaints should be investigated by Inspectors, and that Labour Canada Inspectors should undertake proactive enforcement, including general audits of problem employers, and of sectors with low levels of compliance followed, if necessary, by issuance of orders. The Code and administrative practices should be changed as necessary to support these kinds of proactive activities, and to increase their importance relative to the investigation of individual complaints. Labour Canada should develop strategic plans including targets for inspections and for levels of compliance established through inspections.

The TCRC fully agrees with the Canadian Labour Congress on this most important issue.

Page 94 of the Consultation document:

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)

Page 42 of the Canadian Labour Congress document:

Canadian Labour Congress

For the labour movement, the important point is that effective mechanisms must exist in the workplace to deal with complaints of harassment and violations of the Code. The discussions about internal structures should not be taken as an excuse to defer the issue, but rather as a genuine process to find the most effective mechanisms.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 95 of the Consultation document:

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:

- provide information to workers and employers concerning their procedural and substantive rights and responsibilities;
- receive and process complaints concerning unjust dismissal;
- assist the parties to such complaints to resolve their differences;
- dismiss claims that are patently frivolous or vexatious or belong elsewhere;
- assign cases for adjudication; and
- 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)

Page 44 of the Canadian Labour Congress document:

Canadian Labour Congress

For the labour movement, the important point is that effective mechanisms must exist in the workplace to deal with complaints

of harassment and violations of the Code. The discussions about internal structures should not be taken as an excuse to defer the issue, but rather as a genuine process to find the most effective mechanisms.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 96 of the Consultation document:

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)

Page 45 of the Canadian Labour Congress document:

Canadian Labour Congress

For the labour movement, the important point is that effective mechanisms must exist in the workplace to deal with complaints and violations of the Code. The discussions about internal structures should not be taken as an excuse to defer the issue, but rather as a genuine process to find the most effective mechanisms.

The TCRC agrees with the Canadian Labour Congress on this issue. In addition to this it should be stated in the Code that the final decision of the HRSDC appeals process can be appealed to an arbitrator by labour.

Page 98 of the Consultation document

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)

Page 45 of the Canadian Labour Congress document:

See our opening remarks to this section:

Canadian Labour Congress - Opening remarks for Section III Smart Compliance (page 40)

We are pleased that compliance and enforcement are a major focus of the Report (Chapter 9). Arthurs proposes that all non-union employees be given a written notice of their rights under the Code, and information on how to contact Labour Canada; establishment of easy worker access to Inspectors through toll-free lines and websites; better and more effective procedures for wage recovery and to appeal unjust dismissal; support for worker rights education programs, including those by unions and community groups; greater resources for Labour Canada to hire Inspectors, and to undertake education and proactive auditing of employers with respect to compliance; swifter resolution of complaints; and more active and aggressive enforcement of the Code through fines and, ultimately, criminal prosecutions. Overall, we are very satisfied with these recommendations.

Many can and should be quickly implemented with no legislative change.

The TCRC fully agrees with the Canadian Labour Congress on this issue.

Page 101 of the Consultation document:

b) Pre-Emptive Remedies
Commission Recommendations:

• In addition to any other remedies or penalties imposed by the Canada Industrial Relations Board or by a criminal court, employers found to have committed unfair employment practices should be subject in appropriate cases to pre-emptive remedies designed to prevent future violations.

• Pre-emptive remedies should include a requirement that offenders: file periodic reports; post bonds to be available to reimburse employees in the event of future violations; be subject to regular audits at their own expense; be disqualified for specified periods from receiving government contracts; or, in extreme cases, lose their right to engage in businesses requiring government approvals or permits. (R. 9.30, 9.31)

Page 46 of the Canadian Labour Congress document:

See our opening remarks to this section:

Canadian Labour Congress - Opening remarks for Section III Smart Compliance (page 40)

We are pleased that compliance and enforcement are a major focus of the Report (Chapter 9). Arthurs proposes that all non-union employees be given a written notice of their rights under the Code, and information on how to contact Labour Canada; establishment of easy worker access to Inspectors through toll-free lines and websites; better and more effective procedures for wage recovery and to appeal unjust dismissal; support for worker rights education programs, including those by unions and community groups; greater resources for Labour Canada to hire Inspectors, and to undertake education and proactive auditing of employers with respect to compliance; swifter resolution of complaints; and more active and aggressive enforcement of the

> Code through fines and, ultimately, criminal prosecutions.
> Overall, we are very satisfied with these recommendations. Many can and should be quickly implemented with no legislative change.

The TCRC fully agrees with the Canadian Labour Congress on this issue.

Page 102 of the Consultation document:

> **c) Points System**
> ***Commission Recommendations:***
>
> • The Labour Program should institute a "points" system, similar to that used in many jurisdictions for repeated and serious driving offences. Points should be awarded according to the severity of the offence, and should remain on the employer's record for three years.
>
> • Employers who exceed a given number of points should be regarded as systemic offenders and automatically referred for unfair employment practice proceedings. (R. 9.29)

Page 47 of Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> **A** point system would only encourage bad employers to maximize the use of their points without taking the proper action. Such a system would penalize better employers and minimize the application of the Code.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 103 of the Consultation document:

> **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)

Page 47 of the Canadian Labour Congress document:

Canadian Labour Congress

A six-month limit seems to be below what citizens would be entitled to under the Civil Code in Quebec and Common Law in the rest of Canada. (To be researched … I believe it is two or three years in Quebec.) No limits should be applied in respect to collection of unpaid wages.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 104 of the Consultation document:

b) Administrative Penalties and Surcharges
Commission Recommendations:

• Inspectors and Hearing Officers should have the power to levy penalties of fixed but significant amounts for first offences, escalating for second or subsequent offences.

• Before bringing an appeal from any order of an inspector, an employer must deposit an administrative surcharge equal to 10% of the amount owing, or $100, whichever is the greater. If the appeal is successful, both amounts should be returned to the employer. (R. 9.21, 9.28)

Page 48 of the Canadian Labour Congress document:

Canadian Labour Congress

The Canadian Labour Congress supports the orientation of this recommendation.

The TCRC fully supports the Commission recommendations and the Canadian Labour Congress view on this issue.

Page 106 of the Consultation document:

> **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)

Page 48 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> The Canadian Labour Congress supports the orientation of this recommendation.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 106 of the Consultation document:

> **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)

Page 49 of the Canadian Labour Congress document:

> **Canadian Labour Congress**
>
> The Canadian Labour Congress supports the orientation of these recommendations. Inspectors 2000 should be given greater powers to issue orders to recover unpaid wages, and to establish if there are grounds for a complaint of unjust dismissal. There should be a system of progressively rising fines for employers

who do not live by the rules, plus administrative penalties when payment orders are not complied with.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 107 of the Consultation document:

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)

Page 49 of the Canadian Labour Congress document:

Canadian Labour Congress

The Canadian Labour Congress supports the orientation of these recommendations

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 108 of the Consultation document:

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)

Page 50 of the Canadian Labour Congress document:

Canadian Labour Congress

The Canadian Labour Congress fully supports the orientation of these recommendations. Inspectors should be given greater powers to deal with work related issues.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 109 of the Consultation document:

8. Collection and Recovery Measures
Commission Recommendations:

• The Labour Program should accept responsibility for securing recovery of wages found owing. This might involve arrangements with either a public or a private collection agency, or establishing a new wage collection unit within the Labour Program itself. The costs of proceedings to effect such recovery should be offset, so far as possible, by a surcharge added to the wages and costs in the original order, to be paid by the delinquent employer.

• Part III should be amended to give inspectors the power to order production of an agreement of sale or transfer so as to determine which party to the agreement is liable to employees for wages or other entitlements under Part III.

• Inspectors, Referees (or Hearing Officers) and Regional Directors should be given the power to require employers to testify under oath as to the identity of persons indebted to them and the whereabouts of all their assets.

• Regional Directors should be given the power to attach not only debts owing to the employer but any other unregistered assets of the employer with a fixed or ascertainable value, such as stocks and bonds. They should also be empowered to place a "notice of wages owing" against any registered real or personal property owned by the employer. However, where recovery of unpaid wages requires the seizure and sale of real or personal property that does not have a fixed or ascertainable value, this

should continue to be undertaken by and under the order of the Federal Court.

• Any shares, licences, contracts or assets held by the director(s) of a delinquent corporation, or held by third persons on their behalf, should be regarded as assets that can be attached in order to satisfy an order for the payment of wages that have not been paid by the delinquent corporation.

• If the assets of the delinquent corporation or its directors are transferred to another person or corporation subsequent to the registration of an order for payment of wages in court, the transferee shall be deemed to have acquired as well the obligation to pay the unpaid worker, unless the transferee is a purchaser at arm's length with no knowledge of the order. The onus of demonstrating the lack of knowledge should fall on the transferee.

• Part III should be amended so as to prevent a corporate director from avoiding liability for unpaid wages, benefits or severance pay by resigning at a time when she or he knows or ought reasonably to know that the employer is likely to become insolvent. (R. 5.11, 5.12, 5.13, T 5.2, T. 5.5)

Page 52 of the Canadian Labour Congress document:

Canadian Labour Congress

For the labour movement, the important point is that effective mechanisms must exist in the workplace to deal with complaints and violations of the Code. The discussions about internal structures should not be taken as an excuse to defer the issue, but rather as a genuine process to find the most effective mechanisms.

The TCRC agrees with the Canadian Labour Congress on this issue.

Page 111 of Consultation document:

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)

Page 52 of Canadian Labour Congress document

> **Canadian Labour Congress**
>
> To be discussed

The TCRC appreciates this opportunity to offer our comments on these proposed changes to Part III of the Canada Labour Code.

Respectfully submitted,

M.A. Wheten

Mike Wheten
Teamsters Canada Rail Conference
National Legislative Director