

Political use of the purpose clause in British Columbia labour relations legislation

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ABSTRACT

This article examines a series of amendments to the purpose clause in British Columbia labour legislation from 1973 to the present, employed as a form of political control over labour law and the labour relations board. Over this period, different stages of the use of this provision by the government are apparent. Purpose clauses were first used to support the independence and flexibility of the board. Subsequently, government used the purpose clause to limit the board's discretion, and to direct its decision making. Most recently, the purpose clause has been recast as a 'duties' clause and the government expressly intended that it would direct the board's deliberations and decisions and would guide its application and interpretation of all other substantive provisions in the legislation. We see labour legislation being used, again, as an economic tool. The difference is that it is now being used to restrict the economic power of labour to enhance business competitiveness.

Introduction

Labour relations in many Canadian provinces have been characterised by pendulum swings in tandem with changing provincial governments. With a new government tends to come substantial and wide ranging amendments to labour legislation involving changes to numerous sections of the legislation and modification or replacement of various statutory procedures, reflecting that government's labour relations policy.

However, beginning in the mid-1970s and accelerating in recent years, reform of labour legislation took a different course in one province. In British Columbia, in addition to the usual overhaul of the labour legislation traditionally accompanying political change, new governments began turning to the purpose clause to effectuate their labour relations agendas. Purpose clauses are the lenses through which all other provisions are read. Consequently, modifying this provision can alter the interpretation of the whole of the legislation. As such, the purpose clause is potentially a powerful tool for controlling the application and interpretation of labour law.

This article examines a series of amendments to the purpose clause in British Columbia labour legislation from 1973 to the present, employed as a form of political control over labour law and over the labour relations board. Over this period, we can see different phases of the use of this provision by the government. In the first stage, it was used to support the independence and flexibility of the board. In subsequent years we see the purpose clause used by the government to progressively restrict the freedom and discretion of the board, and to direct its substantive and procedural decision making. We also see that changes to the purpose clause signal a change in direction of labour legislation back to being a tool of economic control. From its roots as an economic tool used to combat the Depression, labour law developed in mid-century into a means of furthering social justice, and is now returning to its origins as a means of achieving economic ends. The most recent changes, in 2002, recast the purpose clause as a 'duties' clause and the government expressly intended that it would direct the board's deliberations and decisions and would guide its application and interpretation of all other substantive provisions in the legislation. Primary among the new purposes to be achieved are those that further the economic competitiveness of businesses.

Purpose clauses

Purpose clauses are a statement of the principles or policies that the legislature intends the legislation to implement, or of the objectives the legislation is intended to achieve, they also define the limits of discretion conferred on the decision-maker by the legislation (Sullivan, 2002, p. 300, 302; Canadian Assn. of Industrial, Mechanical & Allied Workers, Local 14 v. Paccar of Canada Ltd., 1989, p. 465-466). They are substantive provisions located in the body of legislation and, as such, are as binding as any other substantive provision of the legislation. Consequently, statements in purpose clauses can influence interpretation and understanding of the legislation as a whole, and can guide its interpretation in a particular direction (Sullivan, 2002, p. 300-1). However, purpose statements have not been widely used in Canadian legislation, and are not addressed in the interpretation acts in either the federal or provincial jurisdictions (Sullivan, 2002, p. 300). So far, only British Columbia and Ontario's labour legislation include purpose clauses.

The Wagner Act: our beginnings

Canadian labour legislation is founded on America's Wagner Act of 1935 (the National Labor Relations Act), which enhanced the power of trade unions by providing legal protection to unions chosen as workers' bargaining representatives. The Wagner Act was a product of both organised labour's political power and of President Roosevelt's determination to harness economic forces to combat the Depression (Gregory, 1961, 230). As an economic tool, the Act was intended to create purchasing power and inflation to counteract the deflationary effect of depression by enabling trade unions to improve terms and conditions of work through their collective bargaining power (Gregory, 1961, 225, 343-344).

The Act contained a preamble, section 1, explaining the need for the legislation as a response to the harm to commerce caused by industrial disputes, including employer refusal to recognise unions. It set out the following as the policy of the United States:

'[T]o eliminate the causes of certain substantial obstruction to the free flow of commerce and to mitigate and eliminate those obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organisation, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.'

Therefore, the Wagner Act was introduced primarily as an economic tool, with desirable social outcomes anticipated as a result of its economic effects. Labour's power was enhanced only in order to achieve the economic goals of the government, and social outcomes were not the goal in and of itself.

This US experience can provide us with some perspective on the modern Canadian situation. Currently, the economic effects of union collective bargaining power are regarded as economically undesirable in the context of global competition. Governments are increasingly interested in supporting the competitiveness and flexibility of business based on low input costs, and minimal regulation.

Initial optimism and freedom for the board

In 1972 British Columbians elected the New Democratic Party (NDP), a social democratic party, after two decades of conservative Social Credit governments. The NDP's key election promise was to bring about more peaceful and constructive labour relations, ending the years of labour-management turmoil that had badly harmed the province (Weiler, 1980, p. 3), a promise that the opposition party supported in principle and in the legislature.

Against this backdrop of a cooperative effort to improve labour relations in the province and, particularly to calm labour unrest, the Labour Relations Code was substantially reformed and the labour board was restructured. The new Code contained many innovative elements and its primary function was to make the collective bargaining process work successfully and to achieve effective industrial relations by allowing the Board to become involved in the 'total process' (Labour Code of British Columbia, 1973; L. Hanson (NDP), Hansard, 1 June 1987, p. 1489).

The board's jurisdiction was expanded to cover the full spectrum of labour relations issues, and it was conceived of as an independent, expert body which was expected to use the experience and judgement of its members to manage labour relations, with the mission of establishing more constructive labour relations in the province. In order for the board to discharge its newly broadened responsibilities, the legislature granted it a great deal of autonomy and power, much of which had been within the jurisdiction of the courts. A separate Part of the Code set out the board's structure, functions and jurisdiction, and included a purpose clause.

The purpose clause, section 27, provided that the board '...may exercise the powers and shall perform the duties....' given to it under the Code, and identified two objectives to be met by the board in exercising its powers and performing its duties: securing and maintaining industrial peace, and promoting conditions favourable to settlement of disputes. Nevertheless, little express attention was paid, in board decisions, to the Section 27 directions.

There was concern that these extensive board powers could be abused (R.E. Skelly (NDP), Hansard, 4 October 1973, p. 511). However, the structure of the board, the expertise of those appointed to the board, and transparency of board decision-making, were relied on as safeguards designed to protect against abuse of this power. First, the legislation contemplated creation of an ombudsman position, and the ombudsman would be able to publicise board decisions and make recommendations to the Minister's office for legislative change (W. King (NDP), Hansard, 4 October 1973, p. 515).

Second, the structure of the Board anticipated that most panels would be headed by the neutral chair or neutral vice-chair, and representatives of employees and management, would be a safeguard against abuse of power by the Board (W. King (NDP), Hansard, 4 October 1973, p. 515). Third, the Board would have the power to reconsider any decision or order of the Board or panel of the Board. Fourth, the requirements that all Board decisions be made available in writing (s.23), and that all general policies created by the Board be published (s.27(3)) were regarded as safeguards against abuse of power by the Board (E. Hall (NDP), Hansard, 4 October 1973, p. 493).

To a great degree, transparency of decision-making was the means that the legislature relied on to control the new labour board, and the need for control was envisioned only as a safeguard against abuse of the board's powers, not as a means for directing the outcomes of board decisions. For this, the legislature relied on the good judgement and experience of the board. The purpose clause was not intended to restrict the discretion or flexibility of the board in its decision-making. To the contrary, in the interests of allowing the board flexibility, s.27(1) provides that the Board is not bound by the general policies it formulates (W. King (NDP), Hansard, 24 October 1973, p. 917) and s.27(2) permitted the board to seek submissions from other persons when it formulated general policies.

Additional express purposes: 1977

The NDP government was short-lived, losing power in the next election, in December 1975. The new Social Credit government amended the purpose clause in 1977, adding a series of explicit purposes and objects was added (Labour Code of British Columbia Amendment Act, 1977).

These amendments introduced a hierarchy of purposes within section 27. Of primary importance were the public interest and parties' rights and obligations. Second in prominence was effective industrial relations, good working conditions and the well-being of the public. Given least prominence were the purposes of achieving industrial peace, harmonious relations, improving collective bargaining, and promoting conditions favourable to orderly and constructive settlement of disputes.

These amendments expressly introduced concern for the public interest, and the rights and obligations of parties into the purpose clause. They also added an instruction to the board that it may exercise its powers and shall perform its duties 'so as to develop effective industrial relations', again emphasising the public interest, stating that this was to be done 'in the interest of achieving or maintaining good working conditions and the well-being of the public.'

Section 27 then directed the board to have regard for a number of particular purposes and objects, to achieve the earlier mentioned purposes of effective industrial relations, public well-being, and good working conditions. The purposes appearing in the 1973 Code were recast as: 'promoting conditions favourable to the orderly and constructive settlement of disputes between employers and employees or their freely-chosen trade unions' (s.27(c)); and 'securing and maintaining industrial peace, and furthering harmonious relations between employers and employees' (s.27(a)).

A new purpose was introduced: 'improving the practices and procedures of collective bargaining, between employers and trade unions as the freely chosen representative of employees' (s.27(b)).

Finally, the new section 27 also altered the focus of the earlier objects of the legislation, changing the focus from 'harmonious relations' to 'industrial peace', and promoting 'orderly and constructive' settlement of disputes rather than simply settlement of disputes.

Overall, with the 1977 amendments, several considerations were new and central to the purpose clause. Primary among these were concern for the interests and well-being of the public, and concern for parties' rights and obligations. The government intended that the Code would serve the public interest, that labour legislation was not the 'private preserve' of unions and employers, and that it would be clear from section 27 that this legislation put primacy on the public interest over solely parties' interests (L.A. Williams (SC), Hansard, 9 September 1977, p. 5357-8).

Expanded purposes: 1987

In 1987, with the province still under a Social Credit government, the labour board was replaced by an Industrial Relations Council, the Labour Code was renamed the Industrial Relations Act, and the section 27 purpose clause was also significantly amended (Industrial Relations Reform Act, 1987, s.18). Legislative debate over the change to the purpose clause was lengthy and fractious, in stark contrast to the limited debate over the 1973 and 1977 purpose clauses.

While the hierarchy of purposes in section 27 was maintained, a number of changes were made to the provision. First, regard for the 'rights of individuals' was introduced as a primary consideration of the board, alongside the rights and obligations of parties. The opposition suggested that this indicated that rights of individuals were to be treated as paramount to good industrial relations (C. Gabelmann (NDP), Hansard, 1 June 1987, p. 1496).

Regard for good working conditions and the competitive market context was elevated to a primary purpose, the amended section 27 directed the board to recognise the 'desirability for employers and employees to achieve and maintain good working conditions as participants in and beneficiaries of a competitive market economy.' The opposition asserted that this amendment indicated that the government intended to achieve a 'competitive market economy' and that a key object and effect of this legislation would be to remove organised labour from the province (Lovick (NDP), Hansard, 1 June 1987, p. 1487). The opposition characterised the proposed IRA as 'massive government interference' into private contracts between employers and their workers, which is contradictory to the philosophy of a 'competitive market economy' (C. Gabelmann (NDP), 1 June 1987, p. 1482).

Third, the mandatory direction for the board to exercise its duties was maintained, but the language regarding exercise of its powers was changed from permissive to mandatory, directing the board to exercise its powers to achieve the secondary purpose of 'expeditious resolution of labour disputes', rather than the predecessor objective of 'effective industrial relations.' The opposition objected to this change of language, asserting that this would 'open the door to what was commonly referred to in the old days as the injunctions mills ... where where injunctions will be the normal course of events in labour relations, bringing it back into the courts...'. To say that labour disputes need to be resolved and then use 'expeditious' as the only qualifier, leaves an impression and a requirement that it must be done quickly by whatever means. You don't qualify it by saying voluntary, and you don't qualify it by saying effective. (C. Gabelmann, Hansard, 2 June 1987, p. 1508).

Concern for the well-being of the public remained in the amended purpose clause, although it was relocated to the 'objects and purposes.' The opposition NDP was concerned that the new emphasis on the public interest would mean that the interests of those not in labour would be preferred over the subcategory of the public in labour (Hansard, 2 June 1987, p.1502).

Finally, the amendments added a number of purposes and objects that the board was to have regard to in pursuing the above purposes. These included: 'encouraging the voluntary resolution of collective bargaining disputes' (s.27(d)), 'minimising the harmful effects of labour disputes on persons who are not involved in the dispute (s.27(c)), 'providing such assistance to employees and bargaining agents as may facilitate the making or renewing of collective agreements' (s.27(f)), and 'gathering and publishing information and statistics respecting collective bargaining' (s.27(g)). The government indicated that requiring the council to have regard for 'minimising the harmful effects of labour disputes on persons who are not involved in the disputes.' Was fundamental because '[F]or too long organised labour has held the innocent third party to ransom in many a community across this province.' (Hansard, 1 June 1987, p. 1485-6).

Overall, these amendments demonstrated greater focus on the outcomes of the labour relations system than on the process, increased concern for the rights of individuals and insulating individuals from harmful effects of labour disputes. The importance of working conditions and expeditious resolution of disputes were emphasised, and there were more specific and mandatory directions to the board. The Social Credit government presented the labour legislation amendments, including the revamped purpose clause, as a change that would create stability in the province's industrial relations. The opposition NDP disagreed, charging that the goal of the Act, made clear in the purpose section, was to deunionise to become more competitive, to use labour legislation as an economic tool, and to have the state intervene between the parties to ensure competitiveness (Clark (NDP), Hansard, 1 June 1987, p. 1484). In contrast, the clause had no reference to free collective bargaining or the rights of workers to organise in order to enter into free collective bargaining (Clark (NDP), Hansard, 1 June 1987, p. 1484; (Guno (NDP), Hansard, 1 June 1987, p. 1489)). The government was trying to legislate a competitive economy and to legislate consensus in industrial relations. (Clark (NDP), Hansard, 1 June 1987, p. 1484) Noting that the purpose clause is 'the veil through which all the other sections are read', Clark charged that the IRA was not labour legislation, but rather a highly interventionist economic and political agenda, with deunionisation as one of its goals (Clark (NDP), Hansard, 1 June 1987, p. 1484). The NDP observed that the clause formerly spoke of industrial relations between employers and unions, while the proposed clause speaks of relations between employers and employees, and charged that this signalled the government's fundamental philosophy of labour relations and demonstrates the government's intention to remove unions from the province (Gabelmann (NDP), Hansard, 1 June 1987, p. 1481-2).

Front and centre - a new prominence for the purpose clause: 1992

Following its election in 1991, the new NDP government formed a three person sub-committee of special advisors to hold consultations and make recommendations for labour law reform. In 1992 a new purpose section was passed as proposed by the sub-committee, together with a number of other amendments, including renaming the legislation the 'Labour Relations Code', and restoring the name of the labour relations board. REFER TO LEGN

Among the sub-committee's recommendations was the suggestion that the purpose clause be moved to the beginning of the statute in order to emphasise its role as providing the 'governing principles' of the legislation (British Columbia, 1992, p. 18). The purpose clause was given greater prominence by relocating it to section 2 of the Code.

The sub-committee also recommended that the purpose clause be reworded characterising the rewording as reflective of, and providing the foundation for the substantive changes to be made to other parts of the Code. (British Columbia, 1992, p. 18). The Minister of Labour stated that the new purposes section made it clear that economic concerns, particularly the increasingly competitive global economy were key, and that workers and employer must work together in an 'economic partnership' to succeed in this economy, and that without good labour legislation the goal of economic development can be hampered (M. Sihota (NDP), Hansard, 28 October 1992, p. 3668).

Among the changes made in this new purpose clause was removal of the hierarchy of purposes and objects that appeared in earlier versions of the clause. It was reorganised to simply state that the board shall have regard to a list of purposes. The purposes listed were both process and outcome – oriented, many reflected purposes in the former section 27, others were restated, and some purposes were removed. In particular, the following purposes and references were deleted: recognition of the importance of good working conditions as beneficiaries of a competitive market economy; securing and maintaining industrial peace and furthering harmonious relations between employers and employees; assisting employers and bargaining agents to facilitate bargaining collective agreements; and collection of collective bargaining information and statistics. Most contentious was removal of the requirement that the board have regard to the rights of individuals and parties and to parties' obligations.

Although the Social Credit opposition approved of the new prominence of the purpose clause, it objected to removal of any references to a 'competitive economy' and to 'rights of individuals', both of which appeared in the 1987 formulation of the clause (Farrell-Collins (SC), Hansard, 28 October 1992, p. 3668; D. Mitchell (SC), Hansard, 29 Oct 1992, p.3725). The opposition suggested that the deletion of reference to individual rights might mean that the government was trying to enforce collective rights over individual rights and that this change would erode individual rights (Mitchell (SC), Hansard, 5 November, 1992, p. 3858).

The purpose of 'encouraging the voluntary resolution of collective bargaining disputes' was recast as 'encourag[ing] cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and promoting workplace productivity (s.2(1)(b)).

Meanwhile, the mandatory direction to the board in exercising its powers and duties, and the purposes of encouraging collective bargaining between employers and unions, and of promoting conditions favourable to orderly, constructive and expeditious settlement of disputes, were maintained unchanged (s.2(1), 2(1)(a), (d)).

Newly added was the purpose of encouraging mediation as a dispute resolution mechanism (s.2(1)(f)). As well as retaining the concern for minimising the effects of labour disputes on third parties, the new purpose clause including the object of '[ensuring] that the public interest is protected during labour disputes.'(s.2(1)(e)).

Reigning in a rogue board: 2002

The conservative Liberal party gained power in 2001, and labour relations reform was high on the agenda of this new government. Among the changes passed in 2002 were substantial changes to the section 2 purpose clause.

Most notably, the provision was transformed from a purpose clause into a 'duty' clause, retitled 'Duties', and its scope was extended to apply not only the board, but also to 'other persons' exercising powers and performing duties under the Code. They are each directed to exercise powers and perform duties in accordance with a series of eight specific objectives or 'principles'. Six of these objects were the purposes enumerated (though some with slight modifications) in the 1992 purpose clause, and two additional 'duties' were added to the list of purposes: a recognition of rights and obligations and fostering the employment of workers in economically viable businesses (s. 2(1)(a) and (b)).

For instance, encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely chosen representatives of employees, is unchanged (s.(2)(1)(c)); unchanged 'minimises the effects of labour disputes on persons who are not involved in those disputes' (s.(2)(1)(f)); unchanged 'ensures that the public interest is protected during labour disputes (s.(2)(1)(g)); unchanged 'encourages the use of mediation as a dispute resolution mechanism' (s.(2)(1)(h)). s.(2)(1)(d) is a slight modification of a pre-existing provision, changed to include 'developing a workplace the promotes productivity' rather than 'promoting workplace productivity'; similarly (s.(2)(1)(e)) is slightly changed from before, by encouraging settlement of disputes, rather than 'disputes between employers and trade unions.'

The first of the two new objectives is reminiscent of the ‘rights and obligations’ purposes appearing in the 1977 and 1987 amendments, is to recognise the rights and obligation so employees, employers and trade unions under the Code (s.(2)(1)(a)). The second objective, to foster employment of workers in economically viable businesses, is new. (s.(2)(1)(b)).

DUTIES: The most controversial, and what is proving to be the most significant of these changes was the redefinition of the purpose clause as a duties clause. The Minister of Labour stated that this change was motivated by what the government viewed as the board’s failure to apply the purpose clause with sufficient rigour. The board had simply used the section 2 purpose clause as a guideline and a useful policy tool, rather than as a substantive part of the Code which the board was obliged to consider. He emphasised that it was the government’s intention that the board would consider the principles set out in section 2, and that these amendments sought to ensure this by recasting the purpose clause as a duty (G. Bruce (L), Hansard, 15 May 2002, p. 3508).

The effect of this change will likely be significant, since not only the Board, but ‘all other persons’ exercising powers and performing duties under the Code are also obligated to adhere to the Section 2 principles. This includes arbitrators, mediation officers, settlement officers, special officers and industrial inquiry commissions – all of whom are decision makers under the Code. Further, it may apply to trade unions, which are ‘persons’ under the Code, and which exercise powers and duties under the Code in bargaining, striking, picketing, and representing their members (Granville & Pender, 2002).

As one commentator warns, these changes could lead to unprecedented government intervention in collective bargaining and internal union affairs, with the object of encouraging economic viability of businesses. They suggest, as examples, that unions could be required by this provision to collectively bargain in a manner that fosters employment of workers in economically viable businesses, and that unions engaged in striking and picketing may be obligated to do so in a manner that minimises the effect on third parties and that ensures that the ‘public interest’ is protected (ss. 2(1)(b), (f), (g)) (Granville & Pender, 2002). Therefore, it may lead to state intervention in collective bargaining and internal union affairs and significant change to the board’s approach to other Code provisions (Granville & Pender, 2002).

A recent decision of the board suggests that the scope of the duty will not be as wide as has been suggested. In the Health Employers’ Assn. of British Columbia decision (2003, paras. 72, 77) the board considered who else fell under the section 2 duties and, while recognising that decision makers exercise an office or discharge a statutory function under the Code, and it is they rather than the parties, who are under a duty, the Panel stated that it is ‘directly or indirectly’ the parties who ultimately bear the burden of giving life to Section 2:

‘...The other persons must then be those who also engage in decision-making under the auspices of the Code, like arbitrators. It may also extend to mediators, Special Investing Officers, Industrial Relations Officers and anyone else who in the narrow definition of duty exercises an office or discharges a statutory function under the Code. It would not however, include the parties under the Code, except as HEABC has noted, perhaps the duty of fair representation imposed on unions under Section 12 and the requirement to bargain in good faith under Section 11 of the Code.

...

whether directly or indirectly, it is the parties who ultimately must bear the burden of putting life into the Section 2 principles. This is consistent with the Minister’s comments on the recognition of the rights and obligations of all parties in the collective bargaining relationship. He said: ‘By recognising the rights and obligations of employees, employers and trade unions under the code, we ensure recognition of the balance that is so essential in labour relations’: Debates of the Legislative Assembly (Hansard) Vol. 8, Number 1, p. 3508. It is at the very least the Board’s duty to ensure that everyone governed by the Code pays due regard to the principles enunciated in Section 2 by interpreting and applying the Code with that goal in mind.’

EMPLOYEE RIGHTS: One of the new principles introduced was s.2(a), requiring recognition of the rights and obligations of employees, employers and unions. The Minister of Labour explained that employee rights were introduced because employees are affected by board decisions, and recognition of their rights will ensure recognition of the balance that is necessary in labour relations (G. Bruce (L), Hansard, 15 May 2002, p. 3508).

FOSTERING EMPLOYMENT IN ECONOMICALLY VIABLE BUSINESSES: A new addition was the principle of fostering employment of workers in economically viable businesses. The Minister of Labour emphasised that economically viable businesses were necessary for jobs to exist, and pointed out that and 'Labour relations is sometimes said to be about sharing the pie, but of course first you need a pie to share.' (G. Bruce (L), Hansard, 28 May 2002, p. 3635, 3508).

Commentators have warned that this principle may be most significant of the changes to Section 2 (focusing on the term 'economically viable businesses' because it has '...the potential to substantially change the Board's approach to the various substantive provisions of the Code, to the benefit of employers and the detriment of employees and their unions. 'while the Board has no expertise in determining viability and this may lead to lengthy hearings involving expert evidence on this point (Granville & Pender, 2002). The NDP opposition suggested that use of the term 'viable' would require the board to make international comparisons as opposed to within-province comparisons of the competitiveness of businesses in the province (J. MacPhail (NDP), Hansard, 28 May 2002).

NEW ANALYTICAL FRAMEWORK: As described by the board, the new section 2 has created a new analytical framework for board decisions and for fostering labour relations (Judd, 2003). The board has stated that it will approach section 2 by reading it as a whole and together with other substantive provisions of the Code, and treat it as a 'comprehensive roadmap' to application and interpretation of the Code:

'Section 2 sets out a vision of labour relations which: describes the goals of the system to the immediate parties; places those goals within a larger, societal context; and emphasises the mechanisms by which to proceed towards those goals ...

Subsection 2(a) recognises the rights and obligations of the three immediate parties to labour relations: the employees, employers, and trade unions. Subsection 2(b) then identifies the goal of ensuring that the labour relations system fosters or encourages the employment of workers in economically viable businesses.

Building on that base, subsection 2(c) confirms the critical franchise under which employees in the Code can freely choose to be represented by a union.

Once unionisation has been chosen by the employees, subsection 2(d) addresses the Code's preference as to how the employer and the union are to meet the challenges they face. Those challenges range from 'adapting to changes in the economy' to how the parties are to resolve their workplace issues and generate a productive workforce. That direction, first put into the Code in 1993, requires unions and employers to work together to jointly address these issues through 'cooperative participation'.

The subsections then proceed to: emphasise the need for 'orderly, constructive and expeditious settlement of disputes' (subsection 2(e)); place all of these matters within the larger public interest (subsections 2(f) and 2(g)); and, lastly, encourage mediation as a dispute resolution mechanism in labour relations (subsection 2(h))' (Judd, 2003, paras.18-22).

Unlike with previous purpose clauses, the board has embraced the new section 2 duties clause. In the barely two years of its existence, it has been argued and explicitly applied by the board in numerous board decisions. Its effect on labour law has been substantial.

Conclusion

In conclusion, by examining the transformation of the purpose clause in British Columbia's labour legislation from its inception to the present time, several themes emerge. First, we see that the purpose clause has changed from being a mechanism for supporting the independence

and flexibility of the labour relations board into a device for restricting the board's discretion and for directing its decision-making. Over time, this use for the purpose clause has become more distinct, culminating in its change in to a 'duties' clause, charging not only the board but other persons with abiding by its stated principles.

Second, we see a shift in the types of purposes advanced in this clause. Specifically, there is a trend away from interest in promoting constructive and effective labour relations towards concerns for economic viability, protection of non-parties from negative effects of labour disputes, and toward individual over collective rights and interests. Expressly motivating this is the government's economic concerns for the competitiveness of business in the face of globalisation. In a sense, then, the purpose clause is guiding labour legislation in this province to its Wagner Act roots – as a government economic policy tool. The key difference today, is that it is not in the government's economic interest to enhance the power of unions and the effectiveness of labour relations, but rather to curb it to protect the ability of business to produce goods and services at the lowest possible cost and with the minimum of interference by labour.

The use of the purpose clause in labour legislation is proving to be a highly effective means for government to harness labour legislation and the labour board as a policy tool of government, to the certain detriment of labour relations, itself.

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