

Legal update

Upon further review: minister of labour announces major review of Alberta's employment and labour laws

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Employment and labour

The Alberta government recently announced it would review Alberta's workplace laws, including the *Labour Relations Code* and the *Employment Standards Code*.¹ In a public mandate letter addressed to Arbitrator Andrew C.L. Sims, Q.C., the minister of labour identified a number of specific considerations that will form part of the *Labour Relations Code* review. The Alberta government also opened up a survey concerning select topics within the *Employment Standards Code*.

Labour laws

In the mandate letter to Mr. Sims, the minister of labour requested a focused and specific review of the following:

- Whether to mandate a Rand formula in collective agreements.
- Assessing the processes used to let employees exercise their constitutional right to choose, change or cancel union representation in a timely and effective way.
- Whether it is appropriate to provide for the type of reverse onus provisions used elsewhere in respect to certain alleged unfair labour practices.
- Reviewing current definitions of "employer" and "employee" to ensure they are consistent with today's workplaces, including how bargaining rights may be maintained, adjusted, or changed as workplaces and ownership change.
- The options available for dispute resolution in intractable disputes. This may include situations that involve unresolved first contracts, proven unfair labour practices, or the failure to maintain essential services or public emergency.
- Whether to broaden the Alberta Labour Relations Board's mandate to enable adjudication of a wider range of workplace disputes.
- Improving the Alberta Labour Relations Board's powers, procedures and remedial options with a view to more timely dispute resolution, flexibility in the use of mediation, and available remedies reflective of labour relations realities.
- Improved powers and procedures in grievance arbitration, including the current judicial review processes and the option of initial Labour Board oversight.
- Improved mechanisms for ensuring the fair representation of employees in matters arising out of collective agreements.

- Examining areas of the *Labour Relations Code* where, due to the wording of legislation, or developed practice, Alberta's labour law processes depart, without benefit, from the Canadian mainstream.²

Employment laws

The Alberta government also opened a survey concerning the following topics under the *Employment Standards Code*:

- Maternity, parental and compassionate care leaves.
- Introducing leave for the care of critically ill children.
- Other job-protected leaves in relation to the federal Employment Insurance program.
- Improving enforcement and administration.³

The survey can be accessed at: <https://extranet.gov.ab.ca/opinio6/s?s=ESCreview>

Initial thoughts

We have been expecting for some time that the Alberta government would take steps to enhance the rights and protections for organized labour in an effort to increase union density in the province. The choice of these specific topics certainly points towards potential reforms that will increase union density in Alberta.

The Alberta government has already:

- enacted a broader right to strike coupled with essential services provisions in response to the Supreme Court of Canada's decision in *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4;
- passed Bill 6, which extended the right to unionize to farm workers and also extended worker's compensation and occupational health and safety legislation to them; and
- conducted consultations on the labour relations of post-secondary faculty who are governed by the *Post-secondary Learning Act*, SA 2003, c P-19.5.

While a number of labour issues were identified for review, most of the topics can be placed within two broad categories of change to Alberta's labour scheme:

- (1) facilitating unionization;
 - a. the Rand formula.
 - b. changes to certification procedures.
 - c. changes to the definition and scope of "employees."
- (2) changes to protect the rights of organized workers once certified;
 - a. reverse onus provisions regarding unfair labour practices.
 - b. first contract arbitration.

At this point, it is uncertain what changes the government will introduce. The items in the mandate letter are broad enough that many specific changes remain within the government's contemplation at this time.

We will be monitoring developments in this process closely and invite you to speak with one of our employment and labour specialists regarding any or all of these topics.

William Armstrong, QC

The author would like to thank Tyler R. Raymond, articling student, for his assistance in preparing this legal update.

Footnotes

- ¹ <https://work.alberta.ca/labour/labour-relations-code-review.html>
- ² <https://work.alberta.ca/documents/labour-relations-code-review-mandate-letter.pdf>
- ³ <https://work.alberta.ca/department/workplace-legislation-review.html>

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