

**A SUBMISSION TO FEDERAL LABOUR STANDARDS REVIEW
WITH RESPECT TO REVIEW OF PART III, CANADIAN LABOUR CODE**

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A. THE AMALGAMATED TRANSIT UNION CANADIAN COUNCIL

The Amalgamated Transit Union (“ATU”) is the largest labour organization representing transit workers in the United States and Canada. Founded in 1892, the ATU is comprised of over 180,000 members in over 273 local unions in 46 states and nine provinces. The ATU includes bus, subway, light rail and ferry operators, clerks, baggage handlers, mechanics and others in the urban transit, over-the-road, and school bus industries, as well as paratransit, emergency medical, clerical, and municipal workers. The ATU can be found in most major cities of the United States and Canada.

The ATU Canadian Council was first set up in 1973 to be a voice for ATU Canadian members and to be the authority in Canada on issues of legislative, health and welfare. The ATU Canadian Council represents all ATU Locals in Canada, many of which have members who fall under federal jurisdiction.

B. SUMMARY OF THE ISSUES

Many of the provisions in Part III of the *Canada Labour Code* are outdated: much has changed in the forty years since they were first enacted. There has been a distinct shift in the work arena towards contracting-out, privatization and deregulation. The rights of workers are slowly being eroded by an increasingly market driven and competitive work arena, and the *Canada Labour Code* provides insufficient protection to ensure workers are protected from unreasonable demands and incursions by employers. The ATU submits that given the modern marketplace, workforce and work arena, a number of improvements

should be made to the *Canada Labour Code* in order to ensure that workers' rights are protected.

The ATU believes that there are number of areas for improvement in Part III of the *Canada Labour Code*. In particular, the Union recommends that changes be made to the following areas:

- Hours of Work
- Vacation and Paid Holidays
- Workplace Training Opportunities
- National Minimum Wage
- Improving Leave Provisions
- Human Rights Integrated into Labour Standards
- Stronger Enforcement Mechanisms

C. RECOMMENDATIONS

1. Setting the bar for Federal Labour Standards

Purpose of labour standards legislation

There continues to be a power imbalance between employers and employees which, unfettered, allows employers to constantly take advantage of workers who have little or no redress. The purpose of any labour standards legislation should be to provide a minimum reasonable level of basic standards for all employees and to assist in levelling the disproportionate imbalance in the employment relationship.

Employers should treat their employees with respect and dignity and this should be reflected in labour standards legislation. In addition to the basic rights for workers associated with remuneration and time off (i.e. minimum wage, leave, vacations etc.), Part

III of the *Canada Labour Code* should also contain provisions that ensure a workplace free from psychological or physical harassment and/or discrimination on the basis of sex, race, ability or any other prohibited ground.

Unions and labour standards legislation

Workers are entitled to a high set of labour standards regardless of their area of work or whether they are unionized or not. Labour statutes set the floor for the rights of working people, regardless of whether they are unionized or not, and if the bar is set very low, it affects workers across the board.

Unions often base their collective agreements on statutory labour standards and bargain, where possible, for better working conditions for their members. When it comes time to bargain for a contract between the union and the employer, low statutory labour standards make it difficult for the union to advocate for better and more reasonable working conditions for its members. Furthermore, where there is no provision mentioned in a collective agreement, the applicable standard is that in the relevant labour statute. As a result of the downward cycle caused by inadequate labour statutes to protect working people, many of our members may still be required to work long hours; be denied reasonable requests for leave; not be entitled to adequate vacation time; or be subject to harassment at work. Finally, given that the standards set in labour legislation are the base or floor for working people, it should not be open to employers to attempt to negotiate a lower set of standards either with individual employees or with unions.

It is the ATU's position that there should not be a presumption of an equality of power between employers and unions. Labour standards should be strengthened to ensure that all workers operate under adequate working conditions and receive reasonable compensation.

Interplay between provincial and federal statutes

There is very little consistency between the varying provincial and federal labour legislation statutes. The ATU takes the position that no member should be disadvantaged because their employment falls under federal instead of provincial jurisdiction. Therefore,

Part III of the *Canada Labour Code* should incorporate the highest levels of protection afforded in the differing provincial labour and employment statutes. Furthermore, where the federal level of protection is currently higher than any provincial standard, the provinces should be encouraged to raise their standard to match those in the federal jurisdiction.

2. Improving the Existing Federal Labour Standards

Part III of the *Canada Labour Code* currently covers a number of provisions that affect both unionized and non unionized employees. The ATU submits that a number of changes are required to address the new reality of the workforce and the workplace.

Hours of Work

Part III of the *Canada Labour Code* provides for a maximum 48 hour week with overtime to be paid after eight hours in the day and 40 hours in the week. Where there is a statutory holiday during the week, the maximum number of hours will be reduced commensurately. Many of ATU members fall under this provision, including those clerks, baggage handlers, mechanics, and school bus operators. Their hours of work should reflect when they begin the task for which they are hired, and not, as some employers have suggested, when the employee has its first interaction with a client. Furthermore, it is essential that overtime is paid for all time worked beyond the “standard” work day or week.

The *Canada Labour Code* and its Regulations currently allow exemptions to limits on long hours, in particular for employees who work as bus operators, which includes the majority of ATU members. The standard hours of work for city motor vehicle operators may exceed those set out in Part III of the *Canada Labour Code* but not exceed 9 hours in a day and 45 hours in a week. Similarly, the standard hours of work of a highway motor vehicle operator may exceed those set out in Part III *Canada Labour Code* but not exceed 60 hours in a week. Again, where there is a statutory holiday during the week, the maximum number of hours will be reduced commensurately.

The ATU supports the current provisions which allow for different hours of work for many

employees in the bus service industry. It also would encourage the adoption of 'National Hours of Service Regulations' for highway drivers to clarify the hours of work, particularly for inter provincial drivers.

However, even with the current relaxed regulations regarding the hours of work for some transit employees, employers often violate the hours of work provisions in Part III of the *Canada Labour Code*, its Regulations and/or in the relevant collective agreements. This is both dangerous and an aberration from the standards set down to protect workers' safety, right to time off and right to overtime pay for hours worked beyond the "standard" working hours. Furthermore, it is difficult for unionized workforces to remain competitive with non union workplaces where there is often no attempt to enforce the requisite labour standards regarding the hours of work. The ATU submits that strict enforcement provisions should be brought in to both educate employers and employees of their rights and obligations regarding hours of work and employment standards, as well as sanctions for employers who repeatedly violate said provisions. The lack of appropriate penalty or enforcement of said provisions undermines the legislation itself.

The *Canada Labour Code* Regulations also allows for averaging provisions. It is essential that any averaging agreement be negotiated between the employer and employee or where a union represents the employee, the employer and union. Furthermore, although under the current Regulations such agreements must usually be posted, the ATU submits that any averaging agreements should be filed and made subject to the approval of the Director of Labour Standards. This will ensure that only appropriate averaging agreements which comply with the Regulations are approved.

A fundamental flaw regarding the hours of work provisions in Part III of the *Canada Labour Code* is that there is currently no provision for breaks during the workday. The ATU submits that this is a matter that should be corrected with an amendment to Part III of the

Canada Labour Code which would allow for a half hour break after five hours of work.

Vacation and Paid Holidays

Part III of the *Canada Labour Code* currently provides for paid vacation of just two weeks after one year and three weeks after six years and nine paid holiday days. These entitlements are low compared to European levels which generally allow five to six weeks of paid vacation per year.

Vacation time is essential for workers' health, well being and productivity. It can no longer be viewed as a luxury, rather it is a necessity for stress management and good mental health. In order to cope with the workplace pressures, working people need sufficient paid vacation time. Increasing paid vacation time would improve working people's quality of life, allowing them to reconnect with family and friends, and help them maintain a balance between work and their personal life. Moreover, workers often have a more positive outlook on their jobs when they take sufficient time away from the workplace.

The ATU supports the Canadian Labour Congress submission that paid vacation should be increased to at least three weeks after one year and four weeks after 10 years of service. This is norm in many collective agreements, as well being the current provision in Saskatchewan. The ATU also supports the Canadian Labour Congress submission that a 10th paid holiday should be added. Most collective agreements provide for additional paid public holidays, and all workers covered by the *Canada Labour Code* should be afforded this benefit.

Provisions allowing the employer to withhold vacation and vacation pay for up to ten months after the end of year should be eliminated. As a result of these provisions, an employee may have to wait up to 22 months before he or she is able to take any vacation

time. This situation can leave workers overworked and overwhelmed and therefore less able to deal with the stresses of the workplace. The ATU is unclear on what basis this provision was ever introduced or why it has remained unchallenged. That being said, this should be one of the provisions that is eliminated as part of the review of Part III.

Leave

A problem with Part III of the *Canada Labour Code* is that there is currently no provision for sick leave with pay. By excluding paid sick time from the *Canada Labour Code*, employees are more likely to come into work when they are sick, thereby running the risk of infecting their co-workers. Furthermore, employees are less likely to seek necessary medical assistance, since they will lose one or more days of pay. The ATU supports the Canadian Labour Congress submission that there should be five days of paid sick leave per year.

The ATU also supports the Canadian Labour Congress submission that there should be at least one paid day off for marriage leave, and the birth of a child to a father, or an adoption day for either or both parents. Each of these events mark important milestones in employees lives: marriage or the introduction of a new member of an employee's family. It is important that workers know that their employer will accommodate their need to spend these days with their families and friends.

The ATU also submits that the amount of bereavement leave should be increased from three days. Employees require bereavement leave in times of personal crisis. Three days is wholly inadequate to deal with the death of a parent, spouse, child or close relative. A system which requires an employee to return to work three days after the death of a close relative lacks compassion. As a result of this situation, employees are often left with no option but to use their scarce vacation time in these tragic circumstances.

Furthermore, a provision allowing for jury leave should be added akin to the provisions that exist in most provinces. Employees have little choice about whether they will serve on juries: if chosen, it is their obligation to serve unless their employer provides submissions indicating the chosen employee is essential to the workplace. However, employees should not be penalized for performing their civic duty.

The ATU submissions regarding family leave are addressed in the section related to *Balancing Work and Personal Relationships*.

Workplace Training Opportunities

The well-being of Canadian society depends on an active and engaged citizenry with the skills needed to fully participate in all aspects of life. Individuals, families and society all fare better when everyone is provided with an opportunity to train for, find and sustain meaningful work. Unfortunately, workers with limited education and literacy skills often find themselves trapped in low paying, dead end jobs with little or no security. These workers include young people, women who leave the workforce for an extended period of time, recent immigrants, whose qualifications are not recognized, and older workers whose skills have become outdated.

Lifelong learning should be encouraged for all employees and employers, regardless of their industry. However, access to employer-provided or any other affordable, relevant training is extremely limited. This significantly affects our members, as ongoing training is increasingly required given the ever changing standards and statutes in the transit industry.

There is currently no provision in Part III of the *Canada Labour Code* allowing for paid or unpaid training leaves. Therefore, many employees are unable to take time off from

work for extended courses. Part III of the *Canada Labour Code* should be amended to allow for the right to unpaid educational/training leave, as well as paid leave where training is required for employment in the industry.

The ATU also supports the creation and continuation of apprenticeship programs which play an important role in comprehensive vocational training. The current apprenticeship system is sorely lacking and needs further development. More funding for such initiatives is key to ensuring that there are sufficient qualified tradespeople to meet the needs of Canadian industries.

Minimum Wage

Part III of the *Canada Labour Code* currently provides for a minimum wage for workers in the federal jurisdiction, but that wage is currently set at a level equal to the minimum wage in the province of employment. The ATU submits that Part III of the *Canada Labour Code* should set a national minimum wage that is standard in all provincial jurisdictions. A higher minimum wage will likely help combat poverty and thereby decrease reliance on federal income support programs. Studies have shown that it will not have a negative impact on jobs.

The ATU supports the Canadian Labour Congress' submission that the federal minimum wage should be set at \$10 per hour, an amount that is commensurate with the rate required for a person working full time to escape poverty in a larger city. The federal government should show leadership in setting a national minimum wage for all employees in the federal sphere and provinces should be encouraged to match the federal minimum wage.

Human Rights and Labour Standards

Harassment is a reality for a number of workers in Canada. This is particularly true for new immigrants and workers of colour, many of whom are members of the ATU. It is important for Part III of the *Canada Labour Code* to contain complementary provisions to employment equity and human rights legislation.

The ATU submits that Part III of the *Canada Labour Code* should be amended to incorporate provisions related to harassment in the workplace, including racial harassment. To that end, the ATU supports the submissions of the Canada Labour Congress to incorporate the following definitions into Part III of the *Canada Labour Code*.

“Violence” is any incident in which an employee is abused, threatened, harassed, or assaulted by any person. The act may be actual or implied, and either verbal or physical in nature.

“Assault” includes aggravated assault, assault, sexual assault, gestures, kicking, pushing, biting, and/or spitting. “Abuse” includes jokes, comments, obscene remarks, insults, ridicule, swearing, shouting, or threats without weapons, causing emotional distress.

“Harassment” occurs when an individual is subjected to unwelcome or unacceptable verbal or physical conduct related to a prohibited ground: race, colour, national or ethnic origin, religion, age, sex (including pregnancy or child birth), marital or family status, sexual orientation, physical or mental disability, and conviction of an offense from which a pardon has been granted. It can be one or a series of incidents that demean, humiliate, or embarrass another person, and that out to reasonably be known to be unwelcome or offensive.

“Psychological harassment” means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions, or gestures that affects an employee’s dignity or psychological or physical integrity, and that results in a harmful work environment for the employee. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

The ATU also supports the Canada Labour Congress’ submission to require Part III of the *Canada Labour Code* to provide for accommodation for persons with disabilities (on top of job protection for workers injured on the job.) Accommodation of employees, of course, must be done in conjunction with other factors which include seniority.

3. Balancing Work and Personal/Family Responsibilities

The number of women employed in sectors represented by the ATU is steadily increasing. This is particularly true in the school bus industry which was a male-dominated segment of the transit industry that now employs significantly more women than men. While the numbers of women in the workforce in most sectors have increased dramatically, there continue to be expectations that women will continue to be responsible for so called “family duties” including child care, elder care and household tasks.

The current provisions in Part III of the *Canada Labour Code* regarding hours of work and leaves appear to be based on the supposition that only one member of a two-person household is employed outside the home. Given the current demographics of today’s

workforce, the basis for these provisions is flawed. In today's society, both parties in an adult partnership are often working outside the home for a wage. However, the government has failed to address the needs of employees in the current work force by providing adequate or affordable child care, provisions for family or emergency leave, or mechanisms to enforce the current employment standards.

Although the federal government has made strides in the past year to address the lack of affordable childcare in Canada, there are a number of families that continue to struggle to ensure that children are properly cared for while adults are working for a wage. Little or no work has been done to address elder care issues faced by the "sandwich generation" who often care for aging parents and children. Regardless of the availability or affordability of child or elder care options, it is important to recognize that there may be disruptions to child or elder care arrangements that cannot be foreseen and work schedules must be able to accommodate such problems. Part III of the *Canada Labour Code* must be amended to allow some flexibility to reflect the ongoing balancing act of child care, as well as elder care or possible household illnesses.

Part III of the *Canada Labour Code* should introduce provisions allowing for personal or family responsibility leave. A number of provinces have incorporated such provisions into provincial employment statutes and the federal government should follow suit. Workers should have the right to take up to 10 paid days per year to deal with personal and family responsibilities. These could include disruptions to child care and elder care, dealing with household illnesses, domestic emergencies and medical appointments.

In addition to the 10 paid days, workers should be entitled to take up to 12 weeks of unpaid leave with a right to return to the job with no loss of pay in order to assume temporary care giving responsibilities. These may include caring for a sick child, a parent or another family member. Similar provisions already exist in both Quebec and Saskatchewan. The

current provision in Part III of the *Canada Labour Code* for compassionate leave is insufficient as it allows for leave for only up to eight weeks and is restricted to the palliative care of a close relative.

Part III of the *Canada Labour Code* currently does not have any provisions allowing for flextime. The ATU submits that employees should be entitled to voluntarily work a reduced number of hours for a reasonable period of time where their care giving responsibilities are substantial. Such provisions exist in other countries, including the Netherlands and Germany.

Perhaps the biggest issue related to amending any leave or other provision related to family responsibilities is ensuring that mechanisms to enforce such provisions are created. Part III of the *Canada Labour Code* currently provides for up to 52 weeks of combined maternity/paternity leave, as well as job protection and notice of training and promotion opportunities while an individual is on leave. However, there are inadequate enforcement procedures to ensure that even these current provisions are met. Employers may still attempt to breach the *Canada Labour Code* by firing returning mothers/fathers or reassigning them to lower paid positions with few if any repercussions. Part III of the *Canada Labour Code* must be amended to ensure adequate enforcement of all provisions, and particularly those related to protecting the ability of employees to continue with their unpaid family responsibilities without jeopardising their paid employment.

4. Enforcing Federal Labour Standards

The ATU takes the position that it is necessary to promote and enforce the basic standards set out in Part III of the *Canada Labour Code* . There are few, if any, appropriate enforcement mechanisms available to workers whose rights under the *Canada Labour*

Code have been violated. Most complaints arise after the employment relationship has ended and relate to unpaid wages or unfair dismissal. Meanwhile infractions related to maximum hours, non payment or observation of statutory holidays, and/or failure to grant sick leave or maternity or parental leave all go unchecked. The ATU submits that it is necessary to introduce stronger enforcement provisions to the *Canada Labour Code* to ensure that employees may file complaints of violations of labour standards while they are on the job without fear of threat of reprisal.

Proposed enforcement mechanisms include:

- Proactive inspections to ensure compliance with the *Canada Labour Code* instead of individual complaint based enforcement. This should include audits of individual employers based on identified patterns of complaints by individuals and third parties as well as other information available to inspectors. It is not sufficient, however, to rely on individual complaints. Those audited should include employers who have had no complaints filed against them, but are in problem or high risk business sectors.
- Education of employers with respect to their obligations and employees on their rights. This should include devoting resources to worker organizations to promote greater awareness of the standards and the procedure to report violations.
- Fines and/or other onerous sanctions for employers who breach the *Canada Labour Code* should be levied. There should be a system of tickets or fines for improper prescribed acts, with the ability to deviate from the schedule for particularly egregious infractions. Furthermore, the Board should be given the ability to award damages, or, at a minimum, make an employee whole where an employer has breached the *Canada Labour Code*. While a system of fines or the ability for the

Board to award damages would also require procedures to be established to allow employers to appeal orders and fines, the first step is to ensure that effective penalties are imposed upon those who violate the *Canada Labour Code*. As an additional penalty, the names of persistent offenders should be released and/or advertized to the public.

In order to ensure compliance with the *Canada Labour Code*, and therefore protect the rights of workers, the federal government requires the political will to ensure that there are greater resources for education and enforcement. The ATU submits that without an adequate enforcement mechanism, *Canada Labour Code* provisions (current ones or those introduced following the review process) will not necessarily be adhered to except by all but the most scrupulous of employers.

D. Conclusion

The *Canada Labour Code* sets the floor of rights for employment standards, both for unionized and non unionized employees, and it requires improvement. After 40 years, Part III of the *Canada Labour Code* is due for review in order that it may reflect the needs of the current workforce and work arena. The ATU submits that the Commission should take into consideration the purpose of labour legislation to redress the power imbalance between employees and employers when making its final recommendations. Amendments made to the Code should address the changing nature and make up the workforce, and ensure the protection of workers rights, which, in turn, ensures a healthy workplace and economy.