September 19, 2025

ICBA RESPONSE TO B.C. LABOUR CODE REVIEW

The Independent Contractors and Businesses Association ("ICBA"), Canada's largest construction association and representing more than 4,500 member and client companies, is pleased to provide these comments in response to the Section 3 Committee's (the "Committee") Report to the Minister, dated August 31, 2024 (but released to the public in June 2025 (the "Committee Report").

ICBA is the single-largest sponsor of trades apprentices in British Columbia (including female and Indigenous apprentices), directly trains more than 6,000 construction professionals every year, and serves more than 300,000 Canadians our group benefit plans.

Economic Environment

The Committee's Report arrives at a time of significant economic challenges for both Canada and British Columbia. Shifts in the global geopolitical landscape and continued uncertainty over the future of Canada's trade relations with the United States are taking a toll on economic activity and business confidence across the country, including in B.C. On top of this is the impact of a sharp downturn in real estate development and residential construction – a broad sector that accounts for more than a quarter of the province's GDP (as measured by the combined output of all industries). Canadian real GDP contracted in the second quarter of 2025 and is likely to do so again in Q3, thus satisfying the technical definition of a recession. While Statistics Canada does not provide quarterly GDP estimates for individual provinces, it is likely that B.C. is following an economic growth trajectory similar to Canada as a whole.

Last year, economic growth in B.C. came in at a tepid 1.2%, near the bottom among the ten provinces and well below the growth of the B.C.'s population in 2024 – leading to a further decline in the value of economic output (real GDP) on a per capita basis. For 2025, most forecasters expect even weaker economic growth. Business bankruptcies and insolvencies are on the rise, layoffs are mounting, B.C.'s unemployment rate is ticking higher, and the job vacancy rate has fallen markedly from the high levels seen in 2022-23. At the same time, private sector non-residential capital spending remains sluggish and housing starts are running well below the levels needed to close the supply-demand gap that opened up in the

period after 2018. In short, the economic environment in British Columbia is unsettled and business confidence is fragile. **In this setting, the B.C. government should avoid policy changes, including to the *BC Labour Code*, that will further increase business operating costs, reduce competitiveness, and/or erode the ability and willingness of entrepreneurs, business managers and investors to deploy capital and create jobs in British Columbia.**

Response to Report

In the January 16, 2025, mandate letter from the Premier, the first challenge identified for this Minister of Labour was as follows:

- Grow the economy by creating good jobs across British Columbia. *We will collaborate with businesses*, workers, and communities *to attract investments* in both new and traditional sectors as well as emerging sectors of the economy. *This approach will bring certainty for business*, security for workers, and generate the wealth needed to support the essential services British Columbians rely on.

The mandate letter later identified the first priority as:

- To protect key services that British Columbians rely on, work with the Minister of Finance to review all existing Ministry of Labour programs and initiatives, to ensure our programs remain relevant, are efficient, protect employees and their families, *grow the economy*, and help keep costs low for British Columbians. *This is important in the context of* current provincial budget constraints; *the realities faced by provincial employers in relation to access to capital*, global inflation and interest rates; and the threat of American tariffs.

And the final priority was identified as:

- Work to ensure our labour laws are keeping up with modern workplaces through the continued review of the Labour Relations Code, *providing stable labour relations* and supporting the exercise of collective bargaining rights.

To summarize, a central part of the Minister's mandate is to collaborate with businesses to attract investments and bring certainty. Priorities include growing the economy given the realities faced by employers in relation to access to capital, and to stabilize labour relations.

Respectfully, many of the Committee's recommendations would directly contradict the Minister's mandate as defined by the Premier. Indeed, some of the most significant

recommendations would serve to increase uncertainty and destabilize labour relations, threatening investment and discouraging the growth of B.C.'s economy.

In 2018 and again in 2024, the Committee acknowledged the serious consequences of a "pendulum swing" in labour relations in the province. In 2018, the Committee explained:

> *There have been a number of pendulum swings in important Code provisions over the past 30 years largely depending on the governing political party. This is not consistent with predictability, certainty or balance. Although not an easy task, it is essential to avoid pendulum swings by implementing balanced changes that are sustainable. Certainty and predictability are important considerations for investment decisions and the competitive position of B.C. in an increasingly globalized economy.*
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> *In our view, the principles enunciated by the Woods Task Force and Professor Weiler in striking a balance between the interest of employers to operate their businesses and the right of employees to join unions remain important and relevant.*
>
> *Collective bargaining and freedom of association are essential features of Canadian society and must be given meaningful effect. At the same time creating an environment supportive of business, particularly in the context of our rapidly changing economy, is also important.*
>
> *Labour relations in B.C. should not result in a binary mutually exclusive choice between the protection of fundamental workers' rights, productivity and business success. Economic growth can be achieved alongside flexible, innovative protections and practices under the Code.*[1]

Despite this caution against a pendulum swing, the Committee made twenty-nine formal recommendations – a large number calling for significant change – virtually all of which were adopted by the government in the 2019 *Code* changes[2]. These included:

- Automatic successorship in certain sectors upon re-tendering of a contract[3]

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[1] *A Report to the Honourable Harry Bains Minister of Labour; Recommendations for Amendments to the Labour Relations Code*, Submitted by the Labour Relations Code Review Panel, Michael Fleming, Sandra Banister, Q.C., Barry Dong, August 31, 2018, at p.7.

[2] *Labour Relations Code Amendment Act, 2019* (Bill 30 - 2019)

[3] It is important to note that the actual *Code* change went beyond the Committee's recommendation. Specifically, the 2018 Report recommended that food services *in the health sector* fall within the scope of the automatic successorship provisions. The 2019 amendments to Section 35 do not have such a limitation, such that all "food services" without any further definition fall within the scope of the provision. This has

- Increased discretion for the Labour Relations Board to impose remedial certifications
- Period between certification application and vote shortened to 5 business days
- Directed that raid periods in the construction sector occur in July and August of each year[4]
- Permitted applications to re-open collective agreements after a successful raid
- Excluded education as an essential service
- Removed strike vote requirement for access to first collective agreement mediation/arbitration
- Allowed employer conduct during certification process to be considered in the first collective agreement mediation/arbitration process
- Extended freeze on decertification applications
- Doubled the validity of union membership evidence to 180 days

In 2022, the Government swung the pendulum even further in the same direction by making additional very significant statutory changes to the *Code*, including the elimination of the secret ballot in certification votes.[5] It did so in the face of the contrary majority recommendation of the Committee, and also without any "collaboration" or further consultation with the employer community.

In 2024, in the midst of this Committee's consultations and with no discussion with the labour relations community or consultations with business, the Government amended the *Code* to significantly expand rights for provincially regulated unions with respect to picketing at federally regulated work-sites.

As a result of this series of changes in a relatively short period of time, the pendulum in B.C. has swung very strongly towards organized labour, upsetting an important balance that had resulted in relative labour peace over the preceding two decades. The changes made since 2017 have specifically and dramatically expanded unions' ability to certify workplaces – while at the same time diminishing employees' rights and choice to ensure that such certification is what they truly desire. These changes have also impacted businesses' ability to navigate an increasingly difficult and uncertain economic landscape, in the process rendering British Columbia a relatively less attractive jurisdiction in which to invest and build a business.

The significant amendments to the *Code* implemented between 2018 and 2024 require a period for the labour relations community to adapt to these changes and digest their related

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already led to anomalous results. See, for example, *Sky Café*, 2023 BCLRB 61, application for reconsideration pending.

[4] But left in place the limitation that the raid period be in the final year of a three-year agreement.

[5] *Labour Relations Code Amendment Act, 2022* (Bill 10 – 2022) ("Bill 10")

impacts. The 2018 Report expressly recognized the wisdom of an incremental approach in several areas, most notably with respect to its recommendation to retain the secret ballot until the impact of the other "enhanced measures" could be assessed.[6]

In 2024, the Committee restated in the Report the above-noted 2018 caution against pendulum swings and acknowledged ICBA's, the Business Council of British Columbia's and the Centre for Future Work's position that "policy makers need to ensure labour laws are consistent with strong sustainable economic performance in all sectors of the economy."[7] This caution is consistent with the Premier's 2025 mandate letter.

The Committee went on to say that it recognizes "the importance of ensuring labour policy under the *Code* facilitates and encourages a strong and stable economy," before saying that it believed that its recommendations support that objective[8].

Respectfully, we submit that the Committee is mistaken in this latter belief.

While the Committee acknowledged the concerns arising from a pendulum swing in this province and the need to consider the impact of any changes for a reasonable period of time, its most recent recommendations bely that acknowledgement. Rather, the Committee's recommendations would not only continue to swing the pendulum toward an unbalanced and unstable labour relations regime, its recommendations with respect to various Industrial Inquiry Commissions would foster even more uncertainty – uncertainty that the provincial economy can ill-afford in these unpredictable times and which is flatly inconsistent with the Minister's mandate letter.

Construction Industry

The Committee's recommendations with respect to the construction sector are of grave concern to ICBA and our 4,500 member and client companies.

The Committee correctly says the construction industry "has many unique features and is particularly susceptible to economic pressures."[9] This is undoubtedly true, and it means that the need for certainty and stability identified in the Minister's mandate letter is even more pronounced in the B.C. construction industry.

Despite this acknowledgment, the Committee goes on to recommend that an Industrial Inquiry Commission be appointed "to conduct a thorough review of collective bargaining

[6] 2018 Report, p. 12
[7] Report, at p. 5
[8] Report, at p. 7
[9] Report, at p. 46

and labour relations issues in the construction industry and make recommendations to the Minister for any necessary changes to the *Code"*.[10]

The Committee appears to suggest that this review include consideration of various forms of sectoral bargaining, with most of the Report's discussion focused on the history and evolution of CLR and BCBCBTU[11] standard agreements and the various challenges arising from these relationships. The Report also identifies what industry had understood to be settled labour relations policy with respect to craft and wall-to-wall (all employee) bargaining units.

Whether intentional or not, the Report effectively summarizes the instability and failures of the CLR and BCBCBTU models.

However, what the Report fails to note is that the CLR-BCBCBTU model represents less than 15% of all the men and women working in construction and the overall economic activity that is directly attributable to the B.C. construction industry. Moreover, this modest segment of the construction sector is also the least competitive portion of the industry that has (unsurprisingly) seen a decline in representation over the last several decades.

Approximately 250,000 workers were employed in the industry at the beginning of 2025, however, only about 35,000 of those work within the CLR model. The remainder work in open shop and merit-based workplaces with a variety of non-building trade union, and non-union workforces. The union workplaces are primarily wall-to-wall, represented by a variety of unions, including the Christian Labour Association of Canada (CLAC), International Union of Operating Engineers (IUOE), Labourers International Union of North America (LIUNA), and the two carpenters' unions. The open shop sector also includes a mix of craft-based bargaining units represented by the various building trade unions. These arrangements have been able to respond to B.C.'s rapidly changing economy with a flexibility and nimbleness that has not been possible in the CLR model on which the Committee focuses. The result is that the broadly defined open-shop construction sector has expanded while the CLR sector has declined in terms of market share and employment.

When these additional facts and context are considered, it becomes clear that the Committee's focus on the history and challenges of the CLR model is a faulty foundation for its recommendations. If adopted, it threatens to reinforce the weaknesses of this increasingly outdated model into the segments of the construction industry that have done the most to support economic growth and business innovation in British Columbia.

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[10] Ibid.

[11] CLR refers to the Construction Labour Relations Association. BCBCBTU refers to the Bargaining Council of British Columbia Building Trade Unions

The appointment of an IIC to consider yet further changes to construction sector labour relations is precisely the opposite approach to what is needed in these challenging economic times. It would cause further uncertainty and unpredictability that would only serve to undermine the economic health of a sector that represents nearly 10% of British Columbia's GDP.

The Committee justifies this recommendation by saying, "Stakeholders identified numerous issues and advocated for a range of different solutions, including a separate panel to review labour relations in the construction industry."[12]

Respectfully, the Committee's assertion in this regard is misleading. Businesses and their associations *did not* advocate for a panel to review labour relations in the construction industry. Rather, it was only a few organized labour submissions that sought such a panel, and even then, these requests were largely tangential to their main submissions.

None of the main business organizations have sought such a panel.

To be clear, ICBA not only did not request such a panel, we strongly oppose this specific recommendation. It is our understanding that this view is consistent with every other business and industry organization.

The CLR made it clear in its submission that it opposed the sweeping changes being sought by BCBTU. It was only in the event that the government was prepared to consider these changes that it would support the building-trade specific panel review proposed by UA, Local 170.

We strongly urge the Government not to lead the province into a new period of uncertainty for the construction industry by either considering the far-reaching and structural changes being proposed by organized labour at this time or moving to appoint a panel to consider these changes – thereby introducing the additional uncertainty that this would entail.

Sectoral Certification

The Committee appears to understand the hazards of proceeding with sectoral certification in a jurisdiction like B.C. The Committee warns, "Sectoral Certification is a very complex issue which should be approached with considerable caution."[13] The Committee then goes on to expressly recommend that no changes be made to the *Code* relating to sectoral certification.[14]

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[12] Ibid.
[13] Report, at p. 25
[14] Ibid.

ICBA agrees with the Committee's recommendation on this matter.

The Committee acknowledges at page 24 of the Report that, "The *Wagner Act* model of labour relations, on which the B.C. Code is based, is foundational to all North American Jurisdictions and unique to the world." The broad imposition of sectoral bargaining and certification would have a profound and potentially destabilizing impact on labour relations in British Columbia. These models have not been adopted in *Wagner Act* jurisdictions, and for good reason. We urge the Ministry to review the substantive previous submissions made by ICBA and other businesses and industry organizations as the extent of the impact on B.C.'s labour relations model needs to be properly understood.

The Committee noted in its 2018 Report that British Columbia would be an outlier in North America, were it to embark on the path of sectoral certification. None of the submissions received by the Committee since then provide any foundation for proceeding with such a significant change to B.C. labour relations.

There remains no evidence that, as suggested by the BC Federation of Labour, "enterprise bargaining has left many workers behind, unable to exercise their Charter bargaining rights".

Sectoral Bargaining

The Committee has recommended that an IIC be appointed to consult with stakeholders to consider the imposition of sectoral bargaining on certain industries in B.C.

ICBA strongly opposes this recommendation.

The broad imposition of sectoral bargaining in the private sector would have a profound and destabilizing impact on labour relations and the broader investment climate in British Columbia. These models have not been adopted in *Wagner* Act jurisdictions, and for good reason. The Committee has acknowledged that broad-based sectoral bargaining is common only in continental European countries.[15] We submit that the most relevant economic context for British Columbia is North America, the principal market for B.C.'s exports and also the main source of competition for new business investment and business growth.

Some have argued, as the BC Federation of Labour has done, that "enterprise bargaining has left many workers behind, unable to exercise their Charter bargaining rights". To our knowledge, there is no evidence to support this claim. The Report refers to a few historical examples of sectoral bargaining in British Columbia to support its recommendation; however, these examples must be properly understood. We believe these examples provide

[15] Report, at p. 27 (even then, the Committee notes that "There has been a move to decentralize bargaining and increase bargaining at the company level in recent years.")

context that argues against the imposition of sectoral bargaining over the objections of the parties involved.

The Committee notes, at page 26, that, "In the private sector, broad based bargaining exists in several industries." However, all the examples cited by the Committee have come about on a voluntary basis.

The Committee states, "In construction, industry bargaining existed for many years on a voluntary basis."[16] The voluntary nature of this bargaining is an important distinction, and it also should not be lost that the portion of the construction industry to which the Committee refers has a history of labour instability and, as explained above in this submission, has shrunk to the point that it now accounts for a minority of the industry.

The Committee refers to broad based bargaining in the film and television industry, however this is another example in which employers "voluntarily agreed to an industry bargaining scheme".[17] Moreover, the economic environment for the film and television industry in B.C. is strongly shaped by the existence of exceptionally generous taxpayer-financed subsidies that are not available to other industries and result in a competitive landscape that differs greatly from the situation facing other parts of the B.C. private sector.

The Committee similarly cites other examples: "The hospitality, waterfront and recently, the commercial cleaning sectors have all voluntarily developed broad based bargaining schemes."[18]

These are examples of industry actors recognizing that, in the unique circumstances of their industries, broad based collective bargaining was a means to address issues unique to their industries. It also allowed individual employers to determine whether they could fairly compete in that model.

All these examples clearly demonstrate that mandatory sectoral bargaining is not necessary. The strength of B.C.'s current labour relations model is that employers and employees can negotiate terms that make sense for their specific circumstances, thus ensuring both the viability of the employer and continued gainful employment for the employees. It also ensures that workers at an enterprise have a meaningful say in the terms of employment that will govern their working lives.

Imposing mandatory sectoral bargaining in industries in which the parties themselves have not sought such a structure would artificially create winners and losers and threaten the

[16] Report, at page 26
[17] Ibid.
[18] Ibid.

viability of many enterprises that employ hundreds of thousands of B.C. workers. This is particularly true in smaller and mid-sized companies that often are unable to compete with larger organizations which can more easily absorb the costs related to sectorally-mandated terms and conditions of employment.

Some stakeholders, such as the B.C. Federation of Labour, have asserted that sectoral bargaining would channel "competitive pressures between firms into more useful and productive directions: instead of competing with each other to find new ways of driving down labour costs (in a 'race to the bottom'), firms are steered toward more genuine improvements in efficiency, technology and innovation, to the benefit of employers, workers and consumers."[19] That claim fails to understand the marketplace, but what is also left unsaid is that firms that do not have the same available capital as their competitors are left to perish, along with the jobs of their employees. Nor is evidence provided that wages and salaries have been falling – in fact, in B.C., the opposite has occurred. Over the past decade, with the exception of the year following the COVID-19 global pandemic, the average annual increase in construction trade wages has been double the rate of inflation. And, wages and salaries have risen steadily across most sectors of our economy, often growing faster than labour productivity as measured by real GDP per hour.[20]

What is missing from the Report (and from the submissions provided by organized labour) is any actual evidence that mandatory sectoral bargaining would improve working conditions or encourage economic growth and business investment in the province. The only concrete examples cited by the Committee were the voluntary arrangements referenced above that the parties themselves entered into on the basis that it made sense for their industries. There is no suggestion that this voluntary model is not working, nor that there is any need for a mandatory scheme.

Despite this lack of foundation, the Committee has recommended that an IIC be established to consider the imposition or "enabling" of sectoral bargaining in "appropriate circumstances for a particular industry".[21] Respectfully, the Committee has not made a credible case for this recommendation – and indeed has cited evidence which demonstrates it is not needed.

Furthermore, the establishment of an IIC to consider such far-reaching structural changes to B.C.'s *Wagner Act* model would only serve to heighten uncertainty and foster labour relations unpredictability and instability.

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[19] Appendix to the BC Federation of Labour submission, at page 17

[20] David Williams, "Which Industries Pay the Bills for British Columbia? An Update, Business Council of B.C., October 21, 2021.

[21] Report, at page 28

Picketing by Federally Regulated Employees

As noted above, in April 2024, the Government amended the definition of "strike" under the *Code* to permit provincially regulated unions and their members to refuse to cross secondary picket lines set up by federally regulated workers. It did so in the midst of this Committee's consultations, and with no discussion with the labour relations community or collaboration with businesses.

This amendment was misguided and should be corrected.

The amendment has resulted in the untenable situation in which federally regulated picketers can shut down a provincial unionized operation that is uninvolved in a dispute and there is no ability to regulate the activity under either the provincial or federal codes. Such an outcome is directly contrary to the Section 2 duties to (f) minimize the effects of labour disputes on persons who are not involved in the disputes and (g) ensure that the public interest is protected during labour disputes. It also conflicts with the other duties set out in (a), (b), (d), and (e). It is inconsistent with the scheme of the *Code*, is unbalanced, and serves only to encourage labour relations instability. It heightens uncertainty in the province and increases labour instability, all of which is contrary to the Minister's mandate letter.

The Committee was unanimous in holding that the current (amended) strike definition should not remain in place. One Committee member recommended repealing the amendment, and the other two committee members proposed differing amendments.[22]

Removal of Secret Ballot

The removal of the right of employees to freely exercise their decision about unionization continues to be a significant defect in the *Code*. The majority of the Committee recommended against its removal in 2018. Despite this, the government removed this employee right yet still proceeded with other measures in the *Code* (s. 14.1) that were designed to ameliorate any issues arising during the course of such a vote.

In the recent Report, one Committee member continued to recommend that employees retain the right to democratically exercise their choice about union representation through a secret ballot – while the Chair reversed his recommendation without any explanation.

ICBA continues to strongly urge the government to return to employees their ability to democratically exercise their choice to be represented by a union. The secret ballot is the best way to remove any concerns about undue influence being exercised by one side or another in the certification process and to ensure that the true intention of the workforce is

[22] Report, at pages 11-13

reflected accurately and transparently. We also agree with the Committee member who questioned the imbalance resulting from the imposition of s. 14.1 in the face of the removal of the secret ballot.[23]

Membership Evidence

The non-confidential single-step certification process is far less likely to reflect the true wishes of employees with respect to unionization. It is incumbent on the Government to ensure that this process addresses any potential confusion or lack of understanding of what it means to sign a union membership card.

ICBA agrees with the Committee's recommendation that the wording of a membership card makes it clear that the employee is agreeing to be represented by a union without the benefit of a secret ballot vote.

Employee Lists

Certain labour organizations have carried on with their campaign to erode employee privacy without employees first agreeing to have unions as their representatives. They seek the unprecedented disclosure of employees' personal information for the purpose of certification drives prior to demonstrating that they have threshold support (with as little as 20% of employees signing a card), and without these employees having any say over whether their information is disclosed to the union as a third party.

The majority of the Committee has recommended against this erosion of employee privacy rights.

The remaining Committee member has recommended in dissent that the Board be given the ability to order disclosure of employee personal information where "the circumstances or location of the work may impede" a union's organizing drive.[24]

Respectfully, the ability of a union to pursue an organizing drive should not be a factor that results in such a significant and egregious compromise of employee privacy rights. This would result in employees having different privacy rights depending on where they work or in which industry. Such an outcome would be both unfair and inconsistent with the policy aims of privacy legislation in this province – legislation that makes no such distinctions.

Sections 65 and 68

[23] Report, at pages 17-19
[24] Report, at page 23

Unions continue to seek to upset the long-standing balance between the replacement worker ban in Section 68 and the restrictions on secondary picketing in Section 65. In 2018, the Committee rejected this attempt, and explained:

> *The restrictions on both secondary picketing and the use of replacement workers during a labour dispute were proposed by the 1992 Report which recommended the Code should restrict the picketing of a secondary location provided the ability to use replacement workers was also restricted. Those* ***corresponding restrictions*** *were intended to provide balance and enhance industrial stability. We agree that is an appropriate balance.*
>
> *There has been a significant decline in person days lost due to labour disputes in B.C. since the mid -1990s. Employers maintain the Code has been an important factor in this decline. While additional factors play a role, we agree that Sections 65 and 68 have contributed to this decline. The restrictions on secondary picketing and the use of replacement workers were intended to be a package. In our view, the countervailing restrictions on secondary picketing and use of replacement workers during a labour dispute have worked well and should be maintained.*

The majority of the Committee in the Report recognized that the balance hat has been in place for more than 30 years should not be upset. We agree.

The remaining Committee Member has now changed her position and seeks to allow picketing at other divisions of an employer whose employees are not involved in the dispute. No explanation or foundation has been provided for this erosion of the long-standing balance between ss. 65 & 68. This recommendation would serve to only increase labour instability and would be contrary to s. 2(f) of the *Code*.

Conclusion

In light of the challenges confronting the B.C. private sector and the difficult economic and fiscal circumstances facing the province, we strongly urge the Government to reject the Committee's recommendations that would further destabilize B.C.'s labour relations climate and erode the balance that has been carefully built over decades.

The changes to the *Code* introduced since 2017 have already shifted the *Code* dramatically in favour of organized labour, with significant impacts on business competitiveness, employee choice, and economic certainty. Introducing additional sweeping changes – or appointing Industrial Inquiry Commissions to consider them –

will only deepen uncertainty and discourage investment at a time when B.C.'s economy can ill afford it.

The path forward must be one of stability, collaboration, and respect for the realities of a modern, diverse construction industry. More than 85% of B.C.'s construction workforce operates outside of the CLR-BCBCBTU model, and these open-shop, merit-based workplaces have been the engine of growth, innovation, and opportunity for hundreds of thousands of workers and their families. Government policy should reflect and support this reality, rather than seeking to entrench outdated structures that serve a shrinking segment of the industry.

ICBA calls on the Minister to align any future labour relations decisions with the Premier's mandate: to grow the economy, attract investment, and provide certainty for workers and businesses alike. By rejecting recommendations that would fuel division and foster instability, the province can protect B.C.'s economic competitiveness, safeguard employee rights, and ensure that our construction industry remains a driver of prosperity for decades to come.