An Open Letter to the Members of the British Columbia Legislative Assembly

November 12, 2005

Dear Members,

I am asking you, both individually and collectively, to consider and act upon a matter of great consequence which both the Government and the Opposition are evidently unwilling to address.

By registered letter dated September 1, 2005, I communicated to the Minister of Labour and Citizen's Services, Michael de Jong, a request for three initiatives: the immediate repeal of Section 13 of the B.C. Labour Relations Code; the commencement of a contempt of parliament action relating to an unauthorized substantive change to that provision that took place in 1996; and a public review of the mechanisms that provide oversight of the trade unions' obligations to properly represent their members (the Duty of Fair Representation).

On October 27, 2005 I reiterated that request in another registered letter addressed to the Minister, the Premier, and the Attorney General.

In both those letters I made reference to an earlier letter of July 8, 2005 that I had addressed to Vancouver City Council and copied to a number of parties, including those three gentlemen. That earlier letter had fully presented the material evidence I have assembled over a number of years that I contend reveals a conspiracy to deny the citizens of this province their legal entitlement to a fair hearing. The substantive change to Section 13 of the Labour Code in 1996 was a key step in the execution of that conspiracy. I have suggested that the Chair of the Labour Relations Board, Brent Mullin, and Vice Chairs Sharon Kearney and Jan O'Brien must be named in this indictment, primarily due to an assertion they made about the interpretation of Section 13 in a Labour Board decision of February 2003. A proper and full investigation will reveal that there were other individuals involved in this conspiracy.

On the basis of my July 8 letter and some brief subsequent discussion, Vancouver City Councillor, Tim Louis also wrote to the Minister of Labour by letter dated August 30, 2005, fully endorsing the three initiatives I have requested.

I expected this matter to be tabled in the Legislature during this fall session. However, apart from several inconclusive telephone discussions with the Assistant and Executive Directors of Policy Planning and Legislation in the Ministry of Labour and Citizens Services following my September 1 letter, the Government has given me no response whatsoever.

I have similarly approached the Opposition's Leader, Carole James, and Labour

Critic, Chuck Puchmayr, neither of whom have responded.

In my October 27 letter I said I would put this matter to the Members of the House directly.

In my view this is as serious a matter as any that a legislature should be asked to consider. As the elected representatives of the people you receive an exclusive mandate to legislate. Section 13 of the Labour Relations Code was extensively debated (and vigorously opposed by the Opposition) on November 26, 1992 (http://www.legis.gov.bc.ca/hansard/35th1st/h1126pm.htm) before being enacted.

That original version of Section 13 contained, and indeed relied upon, the term "prima facie". It is clear that the labour relations community felt the legitimate definition of that term would not serve its real purpose, so three Vice Chairs of the Labour Relations Board, Paul Devine, John B. Hall, and Brent Mullin, in 1994 devised a fundamentally different definition in the Labour Relations Board's "Terry Norris" decision, BCLRB No. B156/94 (http://www.lrb.bc.ca/decisions/B156$94.pdf) that they then made a "leading decision" (http://www.lrb.bc.ca/decisions/Leadingcases.htm).

In 1996 a statutory revision process was used to substitute that definition, "sufficient evidence that the contravention has apparently occurred" for the term "prima facie". The record shows that there was no amendment, without which there is no authority to effect any substantive change in meaning.

At paragraph 99 of the Board's February 2003 "James Judd" decision, BCLRB No. B63/2003 (http://www.lrb.bc.ca/decisions/B63$2003.pdf) Mr. Mullin and his two colleagues have repeatedly invoked the "intent" of the Legislature to explain the Board's interpretation of the altered Section 13 "sufficient evidence" language, which they acknowledge is different from the "prima facie" standard they claim is embodied elsewhere in the Code (and which the Board applies to cases brought by unions and employers). Nowhere in the "Judd" decision is there any reference to the "Norris" decision or any acknowledgement that the language was altered in 1996.

In 2003 the Board went on to dismiss a record 69 Duty of Fair Representation cases using Section 13.

My letter of July 8 contains a great deal of additional evidence, including reference to Ontario Labour Relations Board decisions and the key Supreme Court of Canada judgement (http://www.canlii.org/ca/cas/scc/1990/1990scc92.html) that the OLRB cites, clearly articulating the proper definition of "prima facie".

Like the majority of self-represented Duty of Fair Representation litigants, my own case was dismissed by the Board using Section 13. My persistence in challenging that outcome has resulted in four decisions by the Board, and three judgements rendered by the B.C. Superior Courts, all relying on an illegitimate definition of "prima facie".

My initial nominal success at judicial review, resulting in a judgement issued in

January 2003 was, I am certain, what prompted the Board's Chair and his colleagues to issue the decision that is now so consequential to this matter. At the same time it appears to have prompted the presidents of CUPE BC and the BC Nurses Union in their submissions to the Section 3 Code Review Committee to call Section 13 "unworkable" and recommend its removal from the Code:
http://www.labour.gov.bc.ca/lrcreview/pdfsubmissions/CUPE.pdf#page=3
http://www.labour.gov.bc.ca/lrcreview/pdfsubmissions/bcnu.pdf#page=11 (paragraph 6)

In fact the evidence that I have assembled demonstrates that successive governments have been well aware of the profound problems relating to the statutory Duty of Fair Representation, including Section 13, which was clearly conceived and drafted in bad faith, and I believe remains unique in western law. Awareness of those problems dates back to at least 1974, when the B.C. Civil Liberties Association issued a very perceptive discussion paper on the Code (http://www.bccla.org/positions/admin/74labour.html). However, the response of the Section 3 Labour Code Review Committee, in its 2003 report, was once again to recommend "monitoring" the situation.

I am asking you to deal with this immediately. The integrity of the Legislature is at stake. This should not be viewed as a partisan issue. In order to legitimately represent your constituents, you are expected to jealously guard the mandate you receive from them.

You also have a responsibility to ensure that all branches of government, in their dealings with citizens, respect the Rule of Law. That obligation is one that was thoroughly articulated in an October 2000 report, "Politics & the Rule of Law", issued by the Compliance and Enforcement Branch of the Ministry of Forests in response to the B.C. Supreme Court's judgement in the Carrier Lumber case. (Carrier Lumber ultimately won what appears to have been a landmark decision against the government, but undoubtedly with an expenditure that no ordinary individual could possibly afford.) That report is online in both HTML and PDF versions:
http://www.for.gov.bc.ca/hen/publications/rule_of_law/rule_of_law_intro.html
http://www.for.gov.bc.ca/hen/publications/rule_of_law/rule_of_law.pdf

Please feel free to contact me if you have any questions about this matter. I can be reached by email at cbudgell@smartt.com or by telephone at 604-736-8518.

Sincerely,

Chris Budgell
Vancouver, B.C.