

“DÉJÀ VU all over again” *
**NDP Employment and Labour
Policies**

*Quoting YOGI BERRA, noted philosopher and great ball player
who also said “The Future ain’t what it used to be”

Lunch and Learn Presentation to
BC Seniors Living Association AGM,
April 16th 2013



Michael Weiler
Employment + Labour Law

Introductions

- Getting to know you:
 - Certified union in your workplace?
 - How many employees? 20+? 50+? 100+?
 - How many locations?
- Getting to know Michael Weiler Employment + Labour Law—if the NDP win next month I may end up on your speed dial. To join our mailing list for updates, blog, seminars, contact Carolyn or me.
- Your **questions are welcome** throughout presentation



NDP policies in Labour and Employment?

- BC Politics through the lens of the BC Labour Code (the “Code”)
- Where is the NDP employment and labour platform? We thought the timing of this presentation would be perfect as the NDP had promised to roll out their specific platforms. Unfortunately they started with their financial plan and by Monday had not disclosed their labour and employment policy platform.



NDP policies in Labour and Employment?

- So today I will either be like Johnny Carson’s “Karnak the Magnificent” OR you can grade me on my prognostications.
- Comparison of NDP fiscal platform to the Liberals—not huge differences: see Vaughan Palmer’s VanSun column Apr 16
- I expect there will be dramatic changes in labour and employment laws, policies and administration.



5 areas to watch under the NDP

I anticipate that there will be changes in 5 areas that you might want to consider.

1. Apprenticeship and training
2. Employment Standards Act
3. Labour Relations Code and related initiatives
4. Workers' Compensation
5. Human Rights...More about these 5 later.



NDP policies in Labour and Employment?

- The question is not so much **will** they make changes, but rather **how significant** will the changes be.
- The BC Fed and various unions have shopping lists of dramatic changes they want the NDP government to implement
- Adrian Dix is talking about moderate changes

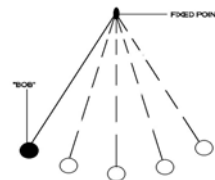


NDP policies in Labour and Employment?

- But if history repeats itself the changes will ultimately be significant and NOT likely in favour of employers.
- So in order to see where we might be going (and most importantly how you might prepare yourselves) let's consider the history of changes that have occurred.



BC Labour Politics since the early 1970's



Polarized? Let's take a look at the history of changes and dramatic **swings** in BC's Labour Relations Code (the "Code") for insight on how the NDP might act.

Having begun my labour practice in the late 1970's this is like a walk down memory lane!



First BC “Labour Code” NDP 1973

1972

- Dave Barrett elected 1972—1975
- Labour Code of British Columbia, 1973
- “innovative and progressive”
- Centralized labour relations with the creation of the Labour Relations Board (“LRB”)



First BC “Labour Code”

- Under the Code more mediation of disputes
- Early decisions of the LRB were innovative and created a whole new body of law unique to Labour Relations in BC.
- Picketing was removed from the courts and regulated by the LRB



Labour Code Amendment Act, 1984 Social Credit

1983-1984

- Although the Socreds were back in office in 1976, only minor changes to the Code until 1984
- Operation Solidarity
- Replaced automatic certification by cards with a secret ballot vote
- Removed sectoral or geographic certifications



Labour Code Amendment Act, 1984 Social Credit

- Decertification allowed after two years without employees in the unit
- Restrictions on secondary picketing
- New certifications dropped by 50% with the secret ballot vote
- Increase in unfair labour practice complaints



Industrial Relations Act Social Credit 1987

1987

- Bill Vander Zalm (remember him?) elected August 1986
- Bill 19—Industrial Relations Act—significant changes including renumbering the sections to make it tough on lawyers!!
- LRB replaced by Industrial Relations Council (IRC) now responsible for adjudication and dispute resolution



Industrial Relations Act Social Credit 1987

- Decertification easier
- Amendments to common employer section
- Clauses in CA's rendered illegal
- Picketing confined to places employees worked under direction of employer
- Common site provisions tightened
- Unions boycotted new IRC



Labour Law Reform 1992 NDP + The Ready Report

1992

- Mike Harcourt's NDP win November 1991
- 3 person commission: Vince Ready, Chair, Tom Roper and John Baigent
- "Recommendations for Labour Law Reform September 1992" ('Ready Report')
- It is interesting to see what they said:



Labour Law Reform 1992 NDP + The Ready Report

“Not only have economic fortunes changed over the last twenty years but so too has the way business is carried on. As never before business is competing in global markets. In doing so it must also respond to other societal imperatives such as concerns for the environment. It faces demands from not only low wage economies but also from



Labour Law Reform 1992 NDP + The Ready Report

“industrialized nations where technology and new work processes have been maximized by management and labour to achieve both productivity and a high standard of living.

“At the same time that markets are globalizing, the workplace is changing rapidly. Women now constitute a large component of the workforce.



Labour Law Reform 1992 NDP + The Ready Report

“Demographics tell us that the supply of labour is diminishing causing employers to adjust their management practices to attract and retain skilled employees. The service sector is expanding with a resulting increase in part time and often temporary employment.”



Labour Law Reform 1992 NDP + The Ready Report

The Ready Report went on find that “union representation can provide employees with a vehicle to achieve a relationship in the work place that is conducive to the individual interests of the employees and the interests of the employer as well as the interests of the public at large”.



Labour Law Reform 1992 NDP + The Ready Report

To no one’s surprise the Ready Report found that “We are of the view that the collective representation of employees by trade unions continues to be a socially desirable institution...”



Labour Law Reform 1992 NDP + The Ready Report

“Therefore, while labour legislation should encourage the practice and procedure of collective bargaining and provide the necessary legal protection to those who seek it, it must also ensure that the institution of collective bargaining remains viable and fluid. To that end it should encourage a more cooperative, co-determinative approach to workplace issues.”



Labour Law Reform 1992 NDP + The Ready Report

Of the 40+ changes, only a few were in favour of employers OR employees; most favoured unions.

- Back to automatic card based certification
- Proper cause test if union organizing
- Easier remedial certifications for UFLP
- Reduce employee rights against union
- Repeal sections 4.1 and 9.1 that prohibited secondary boycotts and non-affiliation rights



Labour Law Reform 1992 NDP + The Ready Report

- Return to old definition of common employer
- Expand union successorship rights and allow successorships in bankruptcies
- Independent right for certification of “dependent contractors”
- First collective agreement arbitration
- Eliminate 2 year decertification provision
- New LRB Chair



Labour Law Reform 1992 NDP + The Ready Report

- No longer would strike votes be government supervised
- Replacement worker prohibition section 68
- Significant restrictions on the right to appeal



Return to Labour Relations Code Liberals 2001

2001

- Gordon Campbell's Liberals win
- Restore the secret ballot vote in almost all certification applications
- Duties section replaces Purposes section
- Expand employer free speech + amend s.6(1)
- Unfortunately despite strong representations from employer associations, the Liberals would not repeal section 68



Déjà vu - 2013

NAVEL GAZING—WHAT WILL THEY DO?

- NDP wants two terms, not one—will move slowly
- They have no money and changes will reflect that
- Enforcement will be enhanced
- Representation in key positions changed



#1 of 5 to watch

1. Apprenticeship and Training

- Liberals made major changes to apprenticeship training—removed unions from the process and gave employers more responsibility
- The Liberals eliminated the Industry Trades and Apprenticeship Commission



Apprenticeship and Training

- NDP may: Increase union role in the governance of the Industry Training Authority and the individual training organizations
- Require apprenticeship training on public sector contracts
- Try to reduce the number of temporary foreign workers
- Return to compulsory trades like Alberta



Apprenticeship and Training

- Return to classrooms to complete training
- Return to counselors to assist
- Greater emphasis on training women, First Nations and new Canadians
- Bottom line is unions were cut out of the process for a decade—they want back in.
- Consider NDP's recognition of CLAC
- On this subject, see opinion piece by Tom Sigurdson, ED of BCYBT, Van Sun March 25



#2 of 5 to watch

2. Employment Standards Act

- Liberals tried to make changes to bring about more flexibility but in practice missed the mark. But they did bring us Family day.
- The NDP will likely get rid of the self-help requirements before a complaint is filed
- Hire more investigators/adjudicators



Employment Standards Act

- Minimum call raised from 2 hours to 4 hours?
- Increase fines?
- Return to the two year limitation from the 6 month limitation?
- Regular increases to minimum wage and elimination of the training wage?
- Restrict section 3 collective agreement exemptions?
- Limit exemptions under the regulations?



#3 of 5 to watch

3. Workers Compensation

- WCB under Liberals has been very well run + costs have been kept relatively low.
- BUT Liberals brought us Bill 14 “Lite”
- Bullying and Harassment policies under OHS to be published in November 2013
- NDP will likely increase union role on Board of Directors of WorkSafeBC



Workers Compensation

- Will WCB be as efficient as it has been in the past or will we see massive increases in assessment rates and become like Ontario?
- BC Fed wants more power for inspectors and remove WCB management's right to overrule orders and penalties
- More generous life time pensions



#4 of 5 to watch

4. Labour Relations Code

- Big question—will they return to card based system and eliminate secret ballot where sign up is 55%?
- OR—maybe go to immediate vote within a day or two
- Limit employer free speech



Labour Relations Code

- Secondary picketing expanded?
- Changes in personnel at the LRB – in 1993 Stan Lanyon appointed as Chair to implement the new Code—will the NDP change the current Chair and/or some of the vice chairs at the LRB?
- Union labour requirements for major public sector projects
- Will CLAC be invited to the NDP table?



#5 of 5 to watch

5. Human Rights

- I don't see many big changes—it is bad enough as it is!!!!
- Perhaps extend the 6 month limitation period
- Personnel changes to better reflect NDP views?



Human Rights

- Allow the Tribunal to award legal fees to successful complainants
- Not likely increase funding for CLAS and BC Coalition
- Increase \$35,000 “ceiling” for injury to dignity – consider court cases
- Not likely to support ‘Super Tribunal’



Be Prepared

- Momma always says “only worry about things you can do something about.”
- Encourage your Association and government connections to lobby against key changes that will make your business more difficult to operate
- You can’t get “out of Dodge”



Be Prepared

- At your 2011 conference I spoke of labour and employment issues in the context of recognizing that your employees are your most important assets.
- Dialogue with and maintaining good relationships with your employees was a good idea back then under a Liberal government—it will be even more important under an NDP government



Be Prepared

- In 2011 I reminded you that there are two types of managers—managers of businesses and managers of people. They are two distinct skill sets yet we often lump them into one job description
- Train your managers in all aspects
- Do an honest audit of your employment and labour practices now before changes



Be Prepared

- Dust off those consultants' reports on Best Practices and corporate governance and implement them now
- Dust off our old strategies in how to beat the unions in a card based certification
- Structure your operations to make it harder for unions to organize; create more management positions; have regular



Be Prepared

- meetings; check CA's and mirror benefits in your non-union operations
- Cover off bullying and harassment policies now before the WorkSafeBC Investigating officer comes knocking. Join the WCB Employers Forum.
 - Consider contracting out vulnerable services



Be Prepared

- Educate yourself on voluntary recognition agreements with CLAC:
 - *Golden Life Management Corp. and HEU and CLAC*, BCLRB No. B180/2006;
 - *Simpe 'Q' Care Inc. and HEU and CLAC*, BCLRB No. B171/2006; and BCLRB No. B161/2007 Leave for Reconsideration of BCLRB No. B171/2006
- Sign up for our newsletters and follow our blog to keep on top of developments and advice on what you might do to weather the changes



Should you be concerned?

“I want to make it clear that I am proud of the work I’ve done for years, side by side with labour unions,” Mr. Dix said. “The labour movement and the NDP have done great things, but our best days are still ahead of us.” Quoted by Rod Mickleburgh, *Globe and Mail*, ‘Dix and labour pledge mutual support’, published Nov 28, 2012; Mr. Dix speaking in keynote speech on Nov 28 to the BC Fed biannual convention.



Thank you for coming!

Michael Weiler Employment + Labour Law

Mike Weiler*

mweiler@htln.com

604-408-5628

Carolyn Weiler, admin

cweiler@htln.com

604-408-5627

In association with:

HUNGERFORD TOMYN LAWRENSEN AND NICHOLS LAWYERS

1100 Cathedral Place, 925 West Georgia Street, Vancouver, BC V6C 3L2

Blog: www.weilerlaw.ca

www.htln.com

*Legal services provided by separate and independent law corporations



Michael Weiler
Employment + Labour Law