



SUBMISSION TO

THE MINISTER OF LABOUR

REQUEST FOR COMMENT ON
CONSULTATION PAPER REGARDING:

THE EMPLOYMENT STANDARDS ACT

Issued by:

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PREFACE

This submission is being made on behalf of the Children's Law Section of the Canadian Bar Association, British Columbia Branch. It has been prepared by the Executive Committee of the Children's Law Section.

The Canadian Bar Association nationally represents over 36,000 members and the British Columbia Branch itself has some 7,000 members. Its members practice law in many different areas and the Branch has established 76 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The Branch also establishes special committees from time to time to deal with issues of interest to the Branch.

CBABC Children's Law Section submissions reflect the views of the Executive members of the CBABC Children's Law Section only and do not necessarily reflect the views of the CBABC as a whole.

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A. INTRODUCTION

The Children's Law Section of the Canadian Bar Association's British Columbia Branch, (CBABC Children's Law Section) appreciates the opportunity to comment on the Ministry of Labour's Consultation Paper regarding amendments to the *Employment Standards Act*, RSBC 1996 c. 113 (*ESA*). The CBABC Children's Law Section consists of lawyers from across British Columbia who specialize in a variety of areas of law that affect children and their rights. The CBABC Children's Law Section supports the amendment of the *ESA* and recommends that a first area of focus be protecting the rights of child workers.

Although there are six themes addressed in the Consultation Paper put forward by the Minister of Labour, this comment will only remark on Theme 1 – "Increasing Protection for Child Workers". The CBABC Children's Law Section supports increasing protection for child workers and believes that the government should categorize certain employment as unsuitable for children due to safety hazards.

B. BACKGROUND

1. Current Legislation

In 2003, the *ESA* changed to state that children under the age of 12 require a permit from the Director of Employment Standards (Director) in order to be employed. Thus, children ages 12 to 14 do not require a permit to work, however they require parental consent to be employed. Children aged 15 and older do not require a permit or the consent of their parents / guardians at all.¹ Children between the ages of 12 to 14 may be subject to some restrictions on their employment. For example, the *ESA* regulations limit the number of hours that a child aged 12 to 14 may work and requires that the child only work under the direct and immediate supervision of a person who has reached the age of 19. Children who work in the entertainment industry are exempt from these

¹ *Employment Standards Act*, RSBC 1996 c. 113, section 9.

regulations as there are specific regulations dictating the times and hours that children can work in the entertainment industry.²

There are no specific “bans” preventing children from working in certain industries; however, there are the following age requirements set out in the *ESA* regulations and other British Columbia legislation:

- An infant under 15 days old may not be employed in recorded entertainment. A child under four may not be employed in live entertainment without a permit.
- The minimum age to obtain a blaster’s certificate is 18 years of age. Anyone employed to work in a mine except for the purpose of training must be at least 18 years of age.
- The minimum age to work in an outlet displaying or distributing an adult motion picture or video is 18 years of age.
- The minimum age to mix, load or apply toxic pesticides or to clean or maintain equipment used for those purposes is 16 years of age.
- The minimum age to work at an establishment licensed to sell liquor or a gaming facility (except as allowed by regulation) is 19 years of age.
- The minimum age to work alone or in isolation in a retail fueling outlet or retail store between 11:00 pm and 6:00 am is 19 years of age.³

Prior to 2003, a permit from the Director was required to employ any child less than 15 years of age. The *Interpretation Guidelines Manual* used by the Employment Standards Branch indicates that a permit to employ a child under 12 would be issued only if the employer can demonstrate all of the following:

- The parent or guardian has given their written permission;
- The school has given its written permission;
- The child will be under direct and immediate adult supervision at all times;

² *Employment Standards Regulation*, B.C. Reg. 396/95 O.C. 1155/95

³ *Report on the Employment Standards Act*, British Columbia Law Institute, 2018

- The child will not be exposed to dangerous chemicals, noxious substances or highly flammable material;
- The child will not work at or near hot surfaces (i.e. cooking grills, deep fryers, coffee maker, etc.);
- The child will not operate inherently dangerous equipment, machinery or power tools (i.e. paper shredder, lawn mower, nail gun, etc.);
- The child will not work in an inherently dangerous work environment (i.e. a construction site); and
- The child will not be required to make his or her own way to and from the work site.

Other matters considered in the decision to issue a permit are:

- The degree to which the child can physically be expected to perform the work;
- Whether the child has the maturity to function in a work environment;
- The child's ability to understand the nature of an employment relationship;
- The child's ability to understand health and safety issues in the workplace.⁴

The permits provided by the Director allow restrictions to be placed on the employer regarding how long the child can work for and in what conditions.

2. Amendments put forward by the British Columbia Law Institute

In 2018, the British Columbia Law Institute (BCLI) authored a report (the Report) regarding amendments to the *ESA* and providing recommendations regarding how children can be better protected under the *ESA*. The Report was authored by members of the Employment Standards Act Reform Project Committee and makes recommendations for amendments to the *ESA* which conform more closely with other provinces in Canada and neighboring jurisdictions, internationally.⁵

⁴ *Ibid.*

⁵ *Ibid.*

The Report authored by BCLI completes an in depth comparison of how the *ESA* differs from international and neighboring provincial standards. This includes Canada ratifying the International Labour Organization’s Convention 138 (*Minimum Age Convention*) in June 2016, which declares that the minimum age of work must not be less than the age of completion of compulsory schooling and not less than 15. In ratifying this convention, Canada declared the minimum age of employment is 16 years old.⁶

There is an exception in the convention for “light work” for persons aged 13 – 15, given it does not affect their school work. However, “light work” is not defined in the convention or the accompanying ILO Recommendation. The Convention leaves this to be determined by the adhering country.⁷

In coming to its recommendations, BCLI commented on the divergence of British Columbia from Canadian and International standards and that the enactment of section 9 of the *ESA* in 2003 “represented a relaxation of the regulatory oversight that had long been in place in relation to the 12 - 15 age group, with reliance on parental consent alone being substituted as the protective mechanism.”⁸

Ultimately the recommendations put forward by the BCLI committee are as follows:

46. Employment of persons under 16 in industries or occupations prescribed by regulation as being likely to be injurious to their health, safety, or morals should be prohibited.

47. The ESA should be amended to confer authority to
(a) designate by regulation industries and occupations likely to endanger the health, safety, or morals of persons under 16; and
(b) set a minimum age between 16 and 19 for employment in any one or more of the said industries and occupations.

48. The special regime for employment of children in recorded and live entertainment under Part 7.1, Divisions 2 and 3 of the Employment Standards Regulation should be retained.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

A **majority** of the members of the Project Committee recommend:

49. The ESA should be amended to:

(a) require a permit from the Director to employ a child below the age of 14, except for employment with parental consent in recorded and live entertainment;

(b) allow employment at age 14 and 15

(i) with parental consent in

(A) an artistic endeavour (including recorded and live entertainment); or

(B) forms of “light work” designated by the Director and listed on the Employment Standards Branch website;

(ii) with a permit from the Director, in cases other than those mentioned in subparagraph (i).

A **minority** of the Project committee recommend:

49a. The ESA should be amended to prohibit the employment of anyone under 15 years of age without a permit from the Director, except as allowed by the regulations applicable to employment of children in recorded and live entertainment.

3. Open Letter Authored by First Call

First Call: BC Child and Youth Advocacy Coalition (First Call) is a non-partisan coalition of 104 provincial and regional organizations who advocate for children and youth through education, community mobilization and public policy advocacy.⁹

In February 2019, First Call authored an open letter to the Honourable Harry Bains, Minister of Labour, highlighting their findings and concerns regarding children in the labour force in British Columbia. Of note, they reference the finding that over the last decade, children under the age of 15 working in British Columbia were injured such that WorkSafeBC paid out over five million dollars in

⁹ “First Call – BC Child and Youth Advocacy Coalition.” First Call | BC Child and Youth Advocacy Coalition, firstcallbc.org/.

injury claims. They also reference that over the same time period, over 2,000 children under the age of 15 claimed work-related health-care costs.¹⁰

First Call's letter seeks the following amendments to the *ESA*:

- **Raise the minimum age for formal employment to 16** with exceptions for appropriate light work as defined in regulations.
- **Require a permit** issued by the employment standards branch for the employment of children under the age of 16.
- With respect to the employment of children and adolescents 12 to 15 years **establish permit criteria** that considers:
 - **acceptable 'light work' including tasks and work places** that do not threaten the health and safety, or hinder the education of children (12-13) and younger adolescents (14-15)
 - **limits on the time-of-day** for work, appropriate to age groups (e.g. prohibit late night and over-night work)
 - **limits on the length of work time** on a daily and weekly basis appropriate to age groups (e.g. no more than 4 hours per day on a school day for children)
- Ensure **hazardous tasks and worksites are entirely off-limits** to workers aged 16 – 17.
- **Mandate adequately resourced, government-led enforcement** to ensure employer compliance and inform government's policy monitoring.¹¹

First Call's letter has been endorsed by over twenty British Columbia organizations.¹²

4. Convention on the Rights of the Child

The Convention of the Rights of the Child codifies children's rights and was ratified by Canada in 1991. The treaty recognizes specific rights for children given their vulnerability and dependence.

¹⁰ "Open Letter to Honourable Harry Bains, Minister of Labour", First Call | BC Child and Youth Advocacy Coalition, https://firstcallbc.org/wordpress/wp-content/uploads/2018/07/First-Call-Letter-to-Minister-Bains-Jan_8-FINAL2.pdf

¹¹ *Ibid.*

¹² *Ibid.*

Article 32 states:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article¹³

The purpose of Article 32 is to protect children from “economic exploitation” and hazardous labour or labour that may affect the child’s education. Article 32, however, does not set out what types of work fall into the above categories. Ultimately, Article 32 provides the signatory country the authority on how to implement Article 32’s provisions.

Nevertheless, in 2003, Canada was asked by the UN Committee on the Rights of the Child to research the extent of children working and then take effective measures to prevent exploitation. As the Canadian Coalition on the Rights of Children noted in a 2016 report, while ILO Convention 138 was discussed and ratified, the federal government did not assess the situation of working children and implementation the provisions in the Convention on the Rights of the Child across the country.¹⁴

¹³ “Convention on the Rights of the Child.” OHCHR, www.ohchr.org/en/ProfessionalInterest/pages/crc.aspx.

¹⁴ Canadian Coalition for the Rights of Children. Right in Principle, Right in Practice. rightsofchildren.ca/wp-content/uploads/2016/01/CCRC-report-on-rights-of-children-in-Canada.pdf. p. 34

C. COMMENTS FROM THE CBABC CHILDREN'S LAW EXECUTIVE REGARDING THEME 1- INCREASING PROTECTION OF CHILD WORKERS

The question posed in the request for comment is:

What is your view on increasing protections for child workers? Should government categorize some work as hazardous/unsuitable for children?

The CBABC Children's Law Executive believes that the *ESA* should be amended to increase the protection of child workers and provides the following comments and recommendations as set out below.

1. Reliance on Parental Regulation

The deregulation in 2003, put reliance on parents to determine if a workplace and type of employment is safe for their child. Although parental involvement is necessary in child employment, it is an insufficient safeguard and needs to be supplemented by experts who are trained to evaluate employment conditions.

Further, there are certain criteria that must be met before the Director is able to issue a permit, however there are no minimum criteria for obtaining parental consent and no minimum information that a parent must obtain to make their consent "informed".

In addition, legislation that relies predominantly on parents to keep children safe makes the assumption that all children live in supportive, family environments with capable parents. Regrettably, this is not the case for all BC children. As a result, legislation needs to be drafted so parental regulation is not the only safeguard, and effective complaint mechanisms are accessible to adults and children alike which can trigger effective enforcement of the law.

Overall the system of parental regulation is flawed and is insufficient in protecting the child workers of British Columbia.

2. Potential for Hazardous Work

Under the current *ESA* children are able to work in a variety of potentially harmful working environments. This includes potential exposure to biological hazards, pesticides, cleaning products, dust, lead, asbestos, environmental exposure, noise exposure and musculoskeletal injuries.

Many parents who are the current decision makers as to whether their child can work may assume that appropriate training will be provided by a potential employer and the *ESA* does not place any requirements on parents as the employment decision makers to ensure that the child worker is properly trained or has proper safety equipment provided to him or her. This results in children being permitted to work in unsafe areas without parents being aware of the risks involved.

3. Limit on Working Hours

Poverty is both a source and outcome of exploitative child labour. The regulations as they are now allow children to work up to 20 hours on regular 5 school day weeks and 35 hours (full time) on weeks with less than 5 school days. A child who has a four day school week could potentially be working up to 35 hours a week as well which is cause for concern. A conservative six hour school day multiplied by four days a week is 24 hours of schooling. An additional 35 hours of work would result in a child being in either school or work for 59 hours per week. This provides limited time for children to maintain their schoolwork and have an appropriate amount of recreation time.

D. CONCLUSION AND RECOMMENDATIONS

1. Minimum Working Age and Regulated Working Conditions

THE CBABC Children’s Law Executive supports the amendments put forward in the First Call open letter, including setting a minimum age for employment without a permit from the Director to be 16 years of age. This is congruent with neighboring jurisdictions and the *Minimum Age Convention* which was ratified by Canada in 2016. This will allow children to focus on their education and personal development. Any child under 16 who will be employed should have authorization from both the Director and a parent or guardian.

The exception to the above will be children in the entertainment industry and “light work” which should be defined in the regulations.

2. Enforcement and Access to Complaint Procedures

In any proceedings relating to the employment of children, the child has a right to participate, receive information in a way the child understands, and be heard. This includes providing children with information about the law, and access to a complaints procedure relating to their employment.

It is recommended that there be a regulatory framework that governs child workers and monitors employment standards. The system as it is now requires self regulation, which leads to inconsistency in enforcement. Right now parents have no assistance in making informed decisions regarding employment for their children. Although parents should be informed, there should be a special unit assigned to regulating child workers that supports parents, listens to child workers and considers their views in decisions affecting them, and holds employers accountable.