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# Broader-Based and Sectoral Bargaining in Collective-Bargaining Law Reform A Historical Review

Sara J. Slinn

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Article abstract

Compelling evidence exists that centralized bargaining structures, including broader-based and sectoral bargaining (bbb), offer significant benefits to workers. Examining the role of bbb in major Canadian labour law reform initiatives between the late 1980s and 2019, this article explores why the labour movement, despite the potential advantages of bbb, has not collectively pursued bbb reforms. It concludes with an analysis of the failure to incorporate bbb proposals into labour legislation and an assessment of the key challenges to adopting significant bbb reforms in the future. Earlier research concluded that bbb proposals in the 1990s failed because of employer opposition and lack of understanding, including by labour. This study departs from earlier conclusions to find that neither of these factors has been prominent regarding bbb in recent decades. Instead, lack of support for bbb arises from some unions' concerns about preserving existing representation rights, resistance to the prospect of mandatory councils of unions, and anticipation of jurisdictional conflicts. Lack of support for bbb from some peak labour organizations arises from a consensus approach to deciding which labour law reform issues to promote. An additional challenge to its adoption is the politicized nature of labour law reform, and the political cost of innovative and untried proposals deter governments from adopting bbb.

## ARTICLE

# Broader-Based and Sectoral Bargaining in Collective-Bargaining Law Reform: A Historical Review

**Sara J. Slinn**

COMPELLING EVIDENCE EXISTS that centralized bargaining structures, including broader-based and sectoral bargaining (BBB), offer significant benefits to workers, such as higher levels of collective-agreement coverage, better labour standards and labour-market integration for vulnerable workers, reduced unemployment, and reduced wage inequality.<sup>1</sup> However, BBB was not the subject of significant postwar labour law reform discussion in Canada, outside of Québec, until the 1990s. Coinciding with economic and political changes that posed critical challenges to the labour movement, this decade saw a wave of interest in the introduction of BBB arise across several jurisdictions. Originating in Ontario in the late 1980s, it spread to British Columbia as a key part of labour law reform discussions in the early and late 1990s and became a minor issue in the federal labour law reform review process later that decade.<sup>2</sup> None of these reviews resulted in substantial BBB amendments to labour legislation.

Since then, and despite the continuing decline of private-sector unions, BBB did not re-emerge as an important reform issue until the Changing Workplaces

1. For summaries of these research findings, see International Labour Organization (ILO), "Trends in Collective Bargaining Coverage: Stability, Erosion or Decline?" INWORK Issue Brief no. 1, ILO, Geneva, 2017; Organisation for Economic Co-operation and Development (OECD), *OECD Employment Outlook 2018* (Paris: OECD, 2018), Chap. 3.

2. Although amendments to broader-based bargaining structures were also an issue in Québec in the 1990s, that debate is not addressed in this article because it arose primarily in the context of contemplated reform of an existing sectoral bargaining scheme rather than the introduction of a new BBB model.

Review (CWR) of Ontario's *Labour Relations Act* (OLRA) and *Employment Standards Act* (ESA) commenced in 2015.<sup>3</sup> BBB gained significant attention in the CWR process, and was also an issue in the subsequent labour law reform processes undertaken in Alberta and British Columbia. However, BBB proposals or recommendations were adopted in none of these instances.

Why, despite BBB's clear benefits to labour and the dire state of private-sector unionism in Canada, did the labour movement not collectively press for BBB reforms? This article explores this conundrum. It begins by briefly describing the concept of BBB and noting the distinct experience of private-sector labour relations outside of Québec in this regard. It then traces the history of BBB as an issue in each of the labour law reform exercises across jurisdictions in English Canada that took place between the late 1980s and early 2019, examining the context in which these issues arose and identifying both key BBB proposals and challenges to these proposals. It concludes with an analysis of the failure of efforts to incorporate BBB proposals into labour legislation and an assessment of the key challenges to adopting significant BBB reforms in the future.<sup>4</sup>

## Broader-Based and Sectoral Bargaining

CANADIAN LABOUR LEGISLATION reflects the Wagner model, which is characterized by decentralized bargaining structures: highly fragmented bargaining units centred on bargaining between a union and a single employer at the individual workplace level. Decentralization is, in turn, associated with reduced union bargaining power and lower rates of collective-bargaining coverage, lower labour standards for vulnerable workers, higher unemployment, weaker labour-market integration of vulnerable workers, and greater wage inequality, in contrast to more centralized systems in which bargaining occurs at sectoral, industrial, or even national levels, as is common outside of North America.<sup>5</sup> Moreover, in countries with enterprise-level bargaining, collective-bargaining rates and union density are not only low but declining, and where enterprise bargaining replaces more centralized arrangements, bargaining coverage rates fall substantially.<sup>6</sup>

3. Labour Relations Act, 1995, SO 1995, c 1, Schedule A; Employment Standards Act, 2000, SO 2000, c 41.

4. This study is based on primary and secondary documents and semi-structured interviews conducted between October 2016 and May 2018.

5. For summaries of these research findings, see ILO, "Trends in Collective Bargaining Coverage"; OECD, *OECD Employment Outlook 2018*, Chap. 3.

6. Jelle Visser, "Wage Bargaining Institutions – from Crisis to Crisis," European Economy – Economic Papers, no. 488, Directorate General Economic and Financial Affairs, European Commission, 2013, 12; ILO, "Trends in Collective Bargaining Coverage," 6–7.

In addition, decentralized Wagner model systems relying on a statutory certification process for access to collective bargaining are criticized as effectively precluding many workers – particularly precarious workers – from accessing statutory collective bargaining.<sup>7</sup> In contrast, BBB systems commonly provide more liberal access to collective-agreement coverage than certification-based models. Consequently, BBB systems may be accessible to workers for whom the certification process is an effective barrier to collective bargaining.<sup>8</sup>

Workers and unions are not the only parties that may benefit from BBB. Labour relations boards have expressed a preference for certifying larger bargaining units, minimizing fragmentation and avoiding a proliferation of units, recognizing that broader-based labour relations structures benefit employees, employers and contribute to more stable labour relations.<sup>9</sup> Benefits to employees include greater worker mobility; common employment conditions across an enterprise; reduced focus on wage competition; and possible reduction of the contracting out of work. Employers benefit from greater administrative efficiency and from employer organization among smaller firms to counter-balance union power. Reduced conflict – resulting from bargaining above the workplace level and opportunities for ongoing dialogue – and establishment of uniform conditions may lead to more stable labour relations.<sup>10</sup>

Rather than being a foreign concept, broader-based and sectoral representation and bargaining are long-standing features of collective-bargaining regulation in this country, integrated within Wagner model systems. Broader-based and sectoral bargaining is a substantial feature of public-sector labour relations in Canada, particularly in British Columbia and Québec, which have long-established, highly centralized public-sector bargaining structures, including negotiations occurring at the province-wide level. In contrast, BBB arrangements are uncommon in the private sector, arrived at through either statutory centralized bargaining or voluntary pattern bargaining, although

7. See C. Michael Mitchell & John C. Murray, *The Changing Workplaces Review: An Agenda for Workplace Rights – Final Report* (Toronto: Ministry of Labour, 2017), 347; Ontario, Ministry of Labour, *Changing Workplaces Review – Special Advisors' Interim Report* (Toronto: Ministry of Labour, 2016), 113.

8. Jonathan B. Eaton, “Labour Law Reform for the New Workplace: Bill 40 and Beyond,” PhD diss., University of Toronto, 1994, 323; Intercede, Toronto Organization for Domestic Workers' Rights (hereafter cited as Intercede), *Meeting the Needs of Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers* (Toronto: Intercede, 1993), 40.

9. See Mitchell & Murray, *Final Report*, 347; North of Superior Healthcare Group v Service Employees' Union Local 1 Canada, 2016 CanLII 55190 (ON LRB); Service Employees International Union (SEIU), Local 204 v Humber/Northwestern/York-Finch Hospital, 1997 CanLII 15494 (ON LRB); Island Medical Laboratories Ltd., (1993), 19 CLRBR (2d) 161.

10. SEIU, *Local 204*, 1997 CanLII 15494, paras. 32, 33; Labour Law Casebook Group, *Labour and Employment Law: Cases, Materials and Commentary*, 9th ed. (Toronto: Irwin Law, 2018), 525.

labour legislation regulating Canada's private sector has incorporated forms of BBB in varying degrees for decades.<sup>11</sup> Both historical and contemporary non-Wagner model, broader-based bargaining, statutory regimes have operated alongside Wagner model systems in the private sector. These include the industry-specific construction collective-bargaining regimes established in most jurisdictions, provincial industrial standards legislation, status of the artist acts, and Québec's "decree" system.<sup>12</sup> Together, these suggest that broader-based representation and bargaining is an ingrained element of collective-bargaining regulation in this country.

The most prominent example of such a contemporaneous system is Québec's decree system, allowing for "decree" extensions of specified collective-agreement terms to apply to employers and workers in a designated geographic and industrial sector, although they were not parties to the original collective agreement and regardless of union status. Established in 1934 to combat unfair competition in wages and working conditions, the decree system pre-existed the province's 1944 Wagner model *Labour Code*, and the two systems continue to offer separate routes to collective representation and bargaining for workers.<sup>13</sup> Although the system has declined in recent decades, it remains active. In this regard, Québec is exceptional; therefore, this article focuses on jurisdictions outside of Québec, which lack a comprehensive, statutory BBB regime applicable to the private sector.

Although BBB is an established element of labour relations systems in Canada, this does not mean it is easily reconciled with how enterprises prefer to organize their operations, labour relations, or workers. Employers still tend to oppose sectoral bargaining because it facilitates unionization, can lead to imposition of master agreements where no collective agreement would otherwise likely have been achieved, and is likely to reduce the availability of wage-based competition that smaller enterprises, in particular, may favour.

11. See, for example, multi-employer bargaining structures available under BC collective bargaining legislation, which was narrowed in the 1990s: Labour Relations Code, SBC 1993, c 82; Labour Relations Code, SBC 1992, c 82.

12. On development of the construction regime, see Harry W. Arthurs & John Crispo, "Countervailing Power in the Construction Industry: Accreditation of Contractor Associations," in H. C. Goldberg and J. H. G. Crispo, eds., *Construction Labour Relations* (Ottawa; Canadian Construction Association, 1968), 376–415. See also Industrial Standards Act, 1935, s 28 (ON); An Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists, CQLR c S-32.1 (QC); An Act Respecting Collective Agreement Decrees, CQLR c D-2 (QC).

13. Collective Labour Agreements Extension Act, SQ 1934, c 56 (QC); Labour Relations Act, SQ 1944, c 30 (QC).

## Labour Law Reform in the 1990s

EMERGENCE OF BBB PROPOSALS in 1990s labour law reform shared some common contextual features among jurisdictions. This period was marked by significant difficulties for labour, including negative public-policy changes, widespread downsizing, growing use of lean production strategies, increasingly hostile employer attitudes toward unions, aggressively concessionary bargaining, and growing servicing demands on unions resulting from employer reorganizing of work systems. These developments drew on unions' resources and resulted in less attention and fewer resources being devoted to union organizing and community action.<sup>14</sup> At the same time, labour-market changes in the organization of work were producing a structural shift toward, and relative growth in, smaller workplaces.<sup>15</sup> Voluntary broader-based bargaining arrangements, such as pattern bargaining operating in the unionized meat-packing, western forest, and Ontario brewery industries, had also collapsed as employers withdrew from these sector-wide arrangements.<sup>16</sup> These changes were accompanied by a shift away from high-wage, semi-skilled jobs to low-wage service-sector employment, made more acute by a developing economic recession that widened disparities in conditions among different groups of workers, highlighting the limited relevance of the existing statutory labour system for a growing proportion of workers.

During this period some scholars, as well as some in the labour movement, recognized that the changing economic context urgently required unions to recalibrate their approaches to organizing and retaining members.<sup>17</sup> Moreover, the fundamental inability of the Wagner model to serve small workplaces well, and the crucial importance of this given the shift in employment toward smaller workplaces, had also become evident to many.<sup>18</sup> Among the starkest warnings of the danger and futility to the labour movement of continuing to pursue traditional organizing was issued in the early 1990s by labour economist and former Ontario Federation of Labour (OFL) research director John

14. Pradeep Kumar, "Diffusing Innovations and Articulating Labour's Vision," *Studies in Political Economy* 74, 1 (2004): 149.

15. John O'Grady, "Beyond the Wagner Act, What Then?," in Daniel Drache, ed., *Getting On Track: Social Democratic Strategies for Ontario* (Montréal & Kingston: McGill-Queen's University Press, 1992), 160, 164–165; Charlotte A. B. Yates, "Staying the Decline in Union Membership: Union Organizing in Ontario, 1985–1999," *Relations industrielles/Industrial Relations* 55, 4 (2000): 640–674.

16. See Anne Forrest, "The Rise and Fall of National Bargaining in the Canadian Meat-Packing Industry," *Relations industrielles/Industrial Relations* 44, 2 (1989): 393–408.

17. Christopher Schenk, "Fifty Years after PC 1003: The Need for New Directions," in Cy Gonick, Paul Phillips & Jesse Vorst, eds., *Labour Gains, Labour Pains: 50 Years of PC 1003* (Halifax: Fernwood, 1995); Paul C. Weiler, *Governing the Workplace: The Future of Labor and Employment Law* (Cambridge, MA: Harvard University Press, 1990).

18. O'Grady, "Beyond the Wagner Act," 157–158; Yates, "Staying the Decline."

O'Grady. Based on his assessment of the greater difficulty of organizing smaller workplaces under the Wagner model and evidence of a structural shift toward, and relative growth in, smaller workplaces, O'Grady concluded that sectoral or regional bargaining structures would be necessary to effectively regulate the private-sector labour market.<sup>19</sup>

Declining union density was also a feature of this period. Density reached a peak of 37.9 per cent in 1983–84 in Canada and remained high throughout the decade.<sup>20</sup> Pradeep Kumar and Gregor Murray identify the turning point for union density in Canada as the moment in the early 1980s when labour force growth began outpacing union membership growth.<sup>21</sup> While union density dropped substantially in the 1990s, the total number of union members continued to grow into the mid-1990s, although at a slower pace than before.<sup>22</sup> Canadian unions appeared to be in a relatively secure position compared with unions in other countries, particularly the United States, which had undergone significant losses in aggregate membership and density.<sup>23</sup> Some commentators have noted that this “membership illusion” fostered “a degree of complacency” within the Canadian labour movement.<sup>24</sup> Scholars have also identified other internal factors, including labour’s fragmented structure, inter-union competition, and dilemmas about the focus of organizing efforts as key impediments to union renewal in Canada.<sup>25</sup>

19. O'Grady, “Beyond the Wagner Act,” 157–158, 160, 164–165. Key changes in work organization included increasing part-time, casual, and home work, contracting out, and outsourcing. In contrast to O'Grady, Paul Weiler advocates adoption and adaptation of European works councils as a possible future for governing the private-sector workplace. Weiler, *Governing the Workplace*, 283–295.

20. W. Craig Riddell, “Unionization in Canada and the United States: A Tale of Two Countries,” in David Card & Richard B. Freeman, eds., *Small Differences That Matter: Labor Markets and Income Maintenance in Canada and the United States* (Chicago: University of Chicago Press, 1993), 110, Table 4.1.

21. Pradeep Kumar & Gregor Murray, “Strategic Dilemma: The State of Union Renewal in Canada,” in Peter Fairbrother & Charlotte Yates, eds., *Trade Unions in Renewal: A Comparative Study* (New York: Continuum, 2003), 202–203.

22. Kumar & Murray, “Strategic Dilemma”; Pradeep Kumar & Christopher Schenk, “Union Renewal and Organizational Change: A Review of the Literature,” in Pradeep Kumar & Christopher Schenk, eds., *Paths to Union Renewal: Canadian Experiences* (Peterborough, ON: Broadview, 2006), 50–51.

23. ILO, *World Labour Report: Industrial Relations, Democracy and Social Stability* (Geneva: ILO, 1997).

24. Gregor Murray, “Union Myths, Enigmas, and Other Tales: Five Challenges for Union Renewal,” *Studies in Political Economy* 74 (2004): 158; Kumar & Schenk, “Union Renewal,” 51.

25. Charlotte A. B. Yates, “Missed Opportunities and Forgotten Futures: Why Union Renewal in Canada Has Stalled,” in Fairbrother & Yates, eds., *Trade Unions in Renewal: A Comparative Study* (New York: Continuum, 2003), 57–74; Kumar & Murray, “Strategic Dilemma”; Pradeep Kumar & Gregor Murray, “Canadian Union Strategies in the Context of Change,” *Labor Studies Journal* 26, 4 (2002); Kumar & Schenk, “Union Renewal.”



As a result, union renewal debates were more limited and slower to emerge in Canada than elsewhere.<sup>26</sup> Discussion of union revitalization strategies was limited, and within central labour bodies such as the OFL and the British Columbia Federation of Labour (BC Fed) such concerns were met with resistance from leaders and affiliates.<sup>27</sup>

A final important contextual factor was political. Several jurisdictions also underwent significant swings in government during this period, as relatively labour- and worker-friendly social democratic parties came to power with strong majorities after long periods of conservative governments. Election of the New Democratic Party (NDP) in September 1990 in Ontario and the following September in British Columbia, and election of the federal Liberal Party in 1993, represented windows of opportunity for progressive labour law reform. However, the particular challenges faced by such reform differed substantially among jurisdictions.

### **Ontario in the 1990s**

The first concrete indication of labour interest in BBB in Ontario arose in policy resolutions and statements from the OFL's 1988 and 1989 conventions. Key among these was the policy statement *The Unequal Bargain*, which arose from a study of juridical extension systems commissioned by the OFL and authored by a researcher from Labour Canada.<sup>28</sup> *The Unequal Bargain* set out a "designated sector" proposal for BBB under the OLRA, which was then adopted at the OFL's 1989 annual convention.<sup>29</sup> The OFL was pursuing statutory mandatory multi-employer bargaining as a solution to what it regarded as ineffective OLRA voluntary employer council provisions. Following its 1989 convention, the OFL sought to develop broader support for BBB and repeatedly urged the government to strike a task force on what it termed "sectoral or broader-based bargaining."<sup>30</sup>

26. Pradeep Kumar & Christopher Schenk, "Introduction," in Kumar & Schenk, eds., *Paths to Union Renewal*, 15.

27. John Weir, former staff director and labour researcher, BC Fed, interview by the author, 12 April 2017; labour researcher, interview by the author, 12 April 2017; Vince Ready, mediator-arbitrator, interview by the author, 22 June 2017; Chris Schenk, former Ontario Federation of Labour research director, interview by the author, 13 October 2016; Fred Wilson, former director of strategic planning, Unifor, interview by the author, 10 July 2017.

28. Labour researcher interview.

29. Ontario Federation of Labour (OFL), *The Unequal Bargain*, 33rd Annual OFL Convention (Toronto: OFL, 1989), 8. The Designated Sector model proposed amending the OLRA to permit the labour relations board to declare a group of employers engaged in similar enterprises – with workplaces of fifty or fewer employees and within a specified region – a "designated sector." Councils of certified unions and councils of unionized employers would negotiate collective agreements. Agreements would apply fully only to unionized employers, but key economic terms would be extended to all employers in the designated sector.

30. Schenk interview; OFL, "Submission by the Ontario Federation of Labour to the Ministry of



However, support for BBB was mixed within the OFL itself, including among the organization's leadership, who did not appear to regard it as a priority issue.<sup>31</sup> Several private-sector unions, including the Steelworkers, the International Ladies' Garment Workers' Union, and the United Food and Commercial Workers, were supportive. However, a labour researcher involved in these discussions recalled that the Canadian Auto Workers (CAW), a large private-sector union, was skeptical – if not hostile – to the idea.<sup>32</sup> As a former OFL research director noted, the CAW's militant approach to bargaining and strikes would not be readily compatible with being bound to an arrangement that would likely require more conciliatory relations among government, management, and labour and less resort to bargaining power in disputes.<sup>33</sup>

Some public-sector unions, such as the Ontario Public Service Employees Union (OPSEU), did not regard statutory BBB as particularly useful, given that some of these unions had already engaged in relatively centralized bargaining. The Canadian Union of Public Employees (CUPE), among the largest public-sector unions in the province, was strongly opposed to the concept of BBB. Its opposition arose in part from the importance CUPE places on the independence and autonomy of its locals. The union regarded BBB as threatening such independence and local democracy and fostering bureaucracy.<sup>34</sup>

Even before the NDP came to power in Ontario in the fall of 1990, the previous Liberal government and its Ministry of Labour had contemplated broader-based, legislative responses to certain difficult workplace issues. These included employer responsibility and successor rights in contract services; extension of the scope of administratively complex pay equity legislation to workers falling outside the existing legislation and to smaller workplaces; and a credible challenge to exclusion from basic ESA protections of certain categories of workers, such as domestics, nannies, and agricultural workers, as a denial of the Charter of Rights and Freedoms section 15 guarantee of equality rights. Recognizing that these were difficult issues to resolve through legislation, the government was considering whether a solution might lie in BBB.<sup>35</sup>

Shortly after coming to power the NDP commenced what became a two-year process of comprehensive OLRA reform. It turned into a highly conflict-ridden

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Labour Regarding Proposed Reform to the Ontario Labour Relations Act," Toronto, 1992; OFL, "Submission by the Ontario Federation of Labour to the Standing Committee on Resources Development on Bill 40," Toronto, 1992.

31. Schenk interview.

32. Labour researcher interview.

33. Schenk interview.

34. Labour researcher interview.

35. "A Sectoral Thrust to Labour-Management Relations: Background Paper for the Communications and Electrical Workers of Canada," photocopy, n.p., 1992, 11, 16.

exercise, marred by leaks of confidential reports and mutual distrust and acrimony within and among the government, the ministry, labour, and business. The Labour Relations Act Reform Committee was appointed in March 1991 by the Minister of Labour, Bob MacKenzie, and included arbitrator Kevin Burkett as chair, union-side labour lawyer Elizabeth McIntyre as special adviser to the committee, and three representatives from each of labour and management. The committee was given thirty days to consider specified issues relating to labour law reform, including the issue of “sectoral bargaining.” The badly fractured committee’s final report, issued in April 1991, included separate labour- and management-side reports. The chair “dissociated [him]self” from both documents, which the chair subsequently described as “diametrically opposed.”<sup>36</sup>

The labour-side report supported BBB but without mentioning the OFL’s “designated sector” proposal. Instead, it recommended appointing a task force to explore sectoral- or regional-level bargaining as a means of extending representative structures to historically non-unionized workers. It identified what it labelled the “20/20 proposal” – a form of minority union representation on established works councils for workplaces with more than twenty employees – as the type of concept to be considered by this task force, though it noted explicitly that it did not “believe that concept is necessarily suited to Ontario’s needs.”<sup>37</sup> Meanwhile, the management-side report dismissed sectoral bargaining as too complex and novel to address in the short period the committee was given to deliberate.<sup>38</sup>

O’Grady, the former OFL research director, produced a discussion paper in May 1991 outlining terms of reference, composition, timeline, and research issues for a provincial task force on broader-based bargaining and sectoral wage-setting.<sup>39</sup> After the Ministry indicated that it could find no one willing to head the task force and serve as its research director the OFL research director at that time, Chris Schenk, provided the Ministry with suggestions for who might be approached about filling those roles.<sup>40</sup> One labour researcher has suggested that many individuals who would have been regarded as candidates for such roles would likely have regarded BBB, and particularly an extension

36. Labour Relations Act Reform Committee (LRARC), *Labour Relations Act Reform Committee Report* (Toronto: Ontario Ministry of Labour, 1991); Kevin M. Burkett, “The Politicization of the Ontario Labour Relations Framework in the 1990s,” *Canadian Labour & Employment Law Journal* 6 (1998): 170.

37. LRARC, *Report of the Management Representatives* (Toronto: Ontario Ministry of Labour, 1991), 10–11, 13–14.

38. LRARC, *Report of the Management Representatives*, 20.

39. John O’Grady, “Discussion Paper on the Terms of Reference, Composition, Timetable and Research Plan for a Provincial Task Force on Sectoral Wage-Setting and Broader-Based Bargaining,” 6 May 1991.

40. Schenk interview.

model such as the designated-sector model, as “not a concept that you can graft onto our labour relations statute” and therefore been reluctant to participate.<sup>41</sup>

The ministry’s August 1991 submission to Cabinet on OLRA reform options included the proposal of a task force on BBB and sectoral wage determination.<sup>42</sup> Leaks of, first, the labour-side report and, then, the Cabinet submission were met with strong opposition from business. This led the government to emphasize the public consultation process that would follow and to try to distance the subsequent bill from the options for reform presented to Cabinet.<sup>43</sup> Neither the subsequent ministry submissions to Cabinet nor the ministry’s November 1991 discussion paper proposed a BBB task force and the ministry indicated to the labour movement that Cabinet would not entertain the idea at that time.<sup>44</sup> Nonetheless, the government continued to show some interest in BBB, and in October 1992 the minister announced that a task force would be created, although it never materialized. The product of this law reform effort, Bill 40, came into effect in January 1993 but included no BBB provisions.<sup>45</sup> Thereafter, the NDP government made it clear that Bill 40 would be the extent of its labour law reform efforts. Some in the labour movement concluded that after the government had pushed Bill 40 through against tremendous employer resistance, it would have been too politically difficult to strike a BBB task force.<sup>46</sup> In short, it appears that at that time in Ontario, the concept of BBB and a task force to study options became casualties of politics and extreme business opposition to comprehensive labour law reform rather than opposition to the merits of the idea itself.

Nonetheless, the OFL continued to be interested in BBB and released *The Big Picture*, a comprehensive study of BBB, in late 1993.<sup>47</sup> According to Schenk,

41. Labour researcher interview.

42. Ontario, Ministry of Labour, ed., “Cabinet Submission Analysis and Policy Options, Reform of the Labour Relations Act: Policy Options and Analysis (Confidential Document Prepared for the Ontario Cabinet),” Ministry of Labour, Toronto, 1991, 74.

43. Judy Fudge, “Little Victories and Big Defeats: The Rise and Fall of Collective Bargaining Rights for Domestic Workers in Ontario,” in Abigail B. Bakan & Daiva Stasiulis, eds., *Not One of the Family: Foreign Domestic Workers in Canada* (Toronto: University of Toronto Press, 1997), 132.

44. “Sectoral Thrust,” 11, 16; Eaton, “Labour Law Reform,” 314.

45. Fudge, “Little Victories,” 132; Eaton, “Labour Law Reform,” 315; Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment, 2d Sess, 35th Leg, Ontario, 1992. Continuing government interest in BBB also included contributing financial support for a May 1992 conference, *Broadening the Bargaining Structures in the New Social Order: International Perspectives for Ontario*, held by the Centre for Research on Work and Society in cooperation with the OFL and commissioning studies on sectoral bargaining and its impact on low-wage workers. Trade Union Research Bureau (TURB), “Broader Based Bargaining,” Vancouver, 1992, 2; Eaton, “Labour Law Reform,” 314.

46. Schenk interview.

47. Geoffrey H. Brennan, *The Big Picture: Broader-Based Bargaining and the Decree System*:

this study did not attract much support or interest either within the OFL or among its affiliates, although it was widely circulated. He attributes this to corporatist interpretations of the study. The OFL did not intend it to promote corporatist reform, an approach that many unions would oppose. For instance, a corporatist approach would conflict with the militant character of some private-sector unions' approaches to bargaining and strikes. Conversely, some public-sector unions that already engaged in relatively centralized bargaining with government did not regard corporatist initiatives as a priority.<sup>48</sup>

### ***British Columbia's Industrial Relations Act Review***

Following decades of conservative Social Credit governments in British Columbia, Mike Harcourt led the NDP to a fall 1991 election win. After many years of what labour regarded as aggressively anti-union Social Credit labour law changes, there was a general expectation that the new government would undertake union-friendly law reform. The NDP government promptly commenced two significant labour law reform exercises. First, in February 1992, the government appointed a subcommittee of special advisers on the *Industrial Relations Act* – composed of union-side labour lawyer John Baigent, employer-side labour lawyer Tom Roper, and mediator and arbitrator Vince Ready – tasked with reviewing the province's general labour relations legislation.<sup>49</sup> Then, in March, the Commission of Inquiry into the Public Service and Public Sector was established to review labour relations and human resources practices and structures in the public sector and public service, under commissioner Judi Korbin (the Korbin Commission).

The subcommittee's final report, issued in September 1992, proposed a form of BBB that would apply to small workplaces in historically non-unionized sectors. This proposal has become known as the Baigent-Ready model, after the two special advisers who developed and proposed this recommendation in the subcommittee's final report. The third special adviser, the employer-side representative, opposed this recommendation.<sup>50</sup>

The Baigent-Ready model was among the few subcommittee recommendations not incorporated into the new *Labour Relations Code* introduced later that year.<sup>51</sup> In contrast, the government did adopt the Korbin Commission's June 1993 final report recommendations to reorganize public-sector

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*A Review of Canadian and International Experience* (Toronto: Ontario Federation of Labour, 1993).

48. Schenk interview.

49. Industrial Relations Act, RSBC 1979, c 212 (BC).

50. British Columbia, Ministry of Labour and Consumer Services, Sub-committee of Special Advisers, *Recommendations for Labour Law Reform: A Report to the Honourable Moe Sihota, Minister of Labour* (Victoria: Ministry of Labour and Consumer Services, 1992) (hereafter cited as *Subcommittee Final Report*).

51. Labour Relations Code, SBC 1992, c 82 (BC).

bargaining in the province into a highly centralized, broader-based structure, incorporating multi-party, two-tiered bargaining.<sup>52</sup>

Unlike Ontario's earlier labour law reform exercise, in this case the special advisers, rather than the labour movement, were primarily responsible for driving interest in BBB reforms. At the time of the subcommittee's review, the labour movement in British Columbia had not yet established a policy on BBB and there had been little discussion of the issue by or among unions. Moreover, the labour movement had not yet started to focus its efforts on under- or un-organized sectors, instead continuing to concentrate on servicing existing members.<sup>53</sup> In contrast, Baigent and Ready were acutely aware of the implications of the changing economy and the associated shift toward smaller workplaces for collective bargaining and unionization and recognized that the Wagner model was ineffective for smaller workplaces. These concerns were the genesis of the Baigent-Ready model.<sup>54</sup> Their efforts included meeting with representatives of the labour movement in British Columbia and other provinces and seeking input on, and trying to ignite interest in, a new, broader-based approach to organizing and collective representation in small workplaces and underrepresented sectors.<sup>55</sup> According to Ken Georgetti, then president of the BC Fed, the special advisers "made a very compelling case to us that we should have a look at this kind of a model." At the same time, the president of the OFL was also encouraging the BC Fed to look at the BBB issue.<sup>56</sup>

A small group of unions and unionists were actively interested in the issue and not only supported but promoted BBB options. These were primarily resource-based unions, such as the Steelworkers, the Canadian Paperworkers Union, and the Telecommunication Workers Union, which had histories of broader-based bargaining, either through their practice of organizing across occupations, industries, and establishments in resource towns or through industry-wide bargaining councils.<sup>57</sup> These unions were aware of the advantages of less fragmented bargaining structures for labour and had experienced the negative consequences of the breakdown of broader-based bargaining and the shift toward enterprise-level bargaining that had been occurring in

52. British Columbia, Commission of the Inquiry into the Public Service and the Public Sector, *Final Report* (Victoria: Crown Publications, 1993); Public Sector Employers Act, RSBC 1996, c 384 (BC).

53. Wilson interview.

54. Ready interview.

55. Ready interview; Weir interview; Ken Georgetti, former president of the BC Federation of Labour (BC Fed), interview by the author, 13 April 2017.

56. Georgetti interview.

57. Ready interview; Weir interview; Diane MacDonald, "Sectoral Certification: A Case Study of British Columbia," *Canadian Labour and Employment Law Journal* 5 (1997): 278.

resource sectors since the 1980s. Consequently, they were interested in revitalizing BBB structures in their industries.<sup>58</sup>

Some public-sector unions also pressed for BBB before both the subcommittee and the Korbin Commission. The leadership of the BC Nurses' Union (BCNU) was among the first in the province's labour movement to support and explore the concept of BBB. Three health care unions – the BCNU, the Health Sciences Association, and the Hospital Employees' Union – made a joint submission to the subcommittee to advocate for BBB reforms.<sup>59</sup> At the time, these unions regarded sectoral bargaining as an organizing and growth strategy and a means of slowing the expansion of precarious work in health care, particularly in the home-care sector, where work was rapidly being deprofessionalized into contracted service work.<sup>60</sup>

Among the strongest advocates for BBB was John Shields, long-time president of the BC Government Employees' Union (BCGEU).<sup>61</sup> This union represented many workers in public and private health care facilities, including numerous care homes. Under Shields' leadership, the BCGEU had focused on organizing new members and on creating an extra-statutory system of BBB in the sector, composed of voluntary bargaining councils and multi-employer bargaining structures with sector-wide master agreements.<sup>62</sup> The BCGEU in particular had pressed the NDP to strike a commission to consider introducing a statutory BBB framework for the public sector in advance of the Korbin Report.<sup>63</sup>

Overall, while interest and support for BBB existed among some unions in specific sectors and industries, it was limited. As one labour researcher recalls, "there was almost zero pick up in the labour movement itself on those issues."<sup>64</sup> According to Vince Ready, the special advisers' efforts failed to elicit any real insights about broader-based options from the labour community, and the subcommittee heard "virtually nothing" on the matter from those appearing at public consultation hearings.<sup>65</sup> Moreover, few written submissions to the subcommittee addressed BBB, with none offering specific

58. Weir interview.

59. Health Care Unions of British Columbia (HCUBC), "Submission to the Special Committee of Advisors on the Industrial Relations Act," Burnaby, 1992. Notably, the BCNU was not affiliated with the BC Fed or the Canadian Labour Congress at the time.

60. Wilson interview.

61. Ready interview.

62. Georgetti interview.

63. John Shields, interview by Ken Novakowski & Bailey Garden, Oral History Project, BC Labour Heritage Centre, Burnaby, 23 November 2016, 8, <http://www.labourheritagecentre.ca/research/oral-history/john-shields/>.

64. Wilson interview.

65. Ready interview.

proposals.<sup>66</sup> According to a former labour researcher involved at the time, the special advisers were frustrated with labour's inability to "get [its] act together about what it wanted."<sup>67</sup>

As a result, the Baigent-Ready model was largely the product of the special advisers' own deliberations and "not really any sort of architecture from the labour movement" or from academics.<sup>68</sup> Labour researcher John Weir describes the resulting proposal as something of a compromise: "I think they were trying to find something that they thought would be politically acceptable to – or might have some viability in terms of – the employer side."<sup>69</sup>

Nonetheless, Roper, the employer-side subcommittee representative, remained opposed to the Baigent-Ready model. He contended that the proposal, if adopted, would favour labour and therefore would be outside the subcommittee's mandate of proposing "fair and balanced" reform, and he noted that few union submissions proposed BBB.<sup>70</sup> He criticized the Baigent-Ready model as contrary to the notion, accepted elsewhere in the subcommittee's recommendations, that collective bargaining is the best foundation for a bargaining relationship. Instead, this proposal would allow employees to vote to unilaterally impose a standard contract on an employer, one that may not be suited to that workplace or employer, and one that an employer may not be willing to accept. Moreover, Roper regarded the model as "investment negative" and likely to create a cartel problem among small workplaces.<sup>71</sup> A labour arbitrator

66. Diane MacDonald, "The New Deal Model of Collective Bargaining and the Secondary Labour Market," PhD thesis, Northeastern University, 1998, 259; TURB, "Broader Based Bargaining," 2; *Subcommittee Final Report*, Appendix 3, 35. See also MacDonald, "Sectoral Certification," 278. Notably, the Vancouver and District Labour Council (VDLC) submitted a special memorandum responding to an informal request by the special advisers for a supplementary submission on whether barriers to collective bargaining for service and small-workplace employees could be addressed through alternative approaches such as multi-employer or sectoral certification. The VDLC recommended striking a task force, to consider whether a modified form of juridical extension would be effective, and amending the *Industrial Relations Act* to provide for mandatory multi-employer bargaining and certification of a union or council of unions, and consolidation of units certified to the same union where the resulting unit would not be clearly inappropriate for bargaining. Vancouver and District Labour Council (VDLC), "Memorandum to Special Committee of Advisors on B.C. Labour Law Reform," VDLC, Vancouver, 1992, 1–2, 4; VDLC, "Unfinished Business: Labour Law for British Columbia Workers," VDLC, Vancouver, 1997, 14; MacDonald, "Sectoral Certification," 278. A joint submission of three healthcare unions (BCNU, HEU, and HSA) called for BBB legislation to operate in parallel with the general collective-bargaining legislation, which would incorporate all public-service employers into sectoral bargaining structures. See HCUBC, "Submission."

67. Weir interview.

68. Weir interview; Wilson interview.

69. Weir interview.

70. *Subcommittee Final Report*, Appendix 3, 35.

71. *Subcommittee Final Report*, Appendix 3, 35. For counterarguments to Roper's objections, see John Baigent, "What Is Sectoral Bargaining?," *Just Wages* 3, 2 (1993): 7; MacDonald,



contends that Roper's key objection was accurate: the Baigent-Ready model would impose master agreements as first collective agreements.<sup>72</sup>

By including the Baigent-Ready model in their recommendations within the subcommittee's final report, Baigent and Ready had hoped to spark a discussion on the issue, which had been lacking in the submissions and labour law reform process to that point.<sup>73</sup> However, while the recommendation ignited employer opposition, labour continued to show little support for the proposal.<sup>74</sup>

In a comprehensive case study, Diane MacDonald describes employer opposition to the Baigent-Ready model as "vigorous" and "often ideological," with objectors concentrated among small and medium-sized businesses.<sup>75</sup> Employers objected to the loss of "flexibility" that they regarded as a necessary consequence of negotiations occurring at a level beyond the individual enterprise. Smaller employers, in particular, were concerned about the prospect of becoming subject to a collective agreement imposed on them reflecting different business strategies, such as quality and productivity competition rather than price competition, which these businesses relied on. This imposition would result in an agreement not tailored to the specific workplace. Finally, some of the employer opposition was also attributed to employers recognizing that the Baigent-Ready model would likely increase access to unionization.<sup>76</sup>

Overall, the labour movement's response was mixed, with labour leaders' reactions described as "very divided."<sup>77</sup> This division reflected widespread uncertainty about how the proposal would operate and a lack of understanding of the issue and its significance.<sup>78</sup> The BC Fed president at the time described the Baigent-Ready model as "such a new concept that people couldn't get their heads wrapped around it." In his view, the issue of BBB and this proposal in particular "came [up] too quickly and [it] didn't give heads of unions enough time to really understand it and understand the implications of it." However, Georgetti also noted that the unfamiliarity and uncertainty "wore off very

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"Sectoral Certification," 279–283.

72. Stan Lanyon, mediator-arbitrator, interview by the author, 7 November 2016.

73. Ready interview. For a summary of strengths and weaknesses of the Baigent-Ready model, including a review of other commentators' assessments of the model, see Sara Slinn, "Changing Workplaces Review Research Projects: Collective Bargaining," report prepared for the Ontario Ministry of Labour, 30 November 2015, sec. 7.6. <http://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Slinn-9-Access%20to%20Collective%20Bargaining.pdf>.

74. Ready interview.

75. MacDonald, "Sectoral Certification," 274, 277.

76. Baigent, "What Is Sectoral Bargaining?," 7; MacDonald, "Sectoral Certification," 274, 275, 277–278.

77. Weir interview.

78. Weir interview; Georgetti interview.

quickly – after the fact, but we could never get it back on the table.”<sup>79</sup> Others felt that some unions accustomed to the enterprise bargaining structure “didn’t quite grasp the significance” of BBB.<sup>80</sup>

Many unions also had pragmatic concerns, seeing BBB and the Baigent-Ready model as threats to institutional union interests. These unions were concerned about inter-union competition, retention of bargaining rights, and the prospect of being forced into bargaining councils, as well as how inter-union disputes would be resolved under a BBB framework.<sup>81</sup> In particular, some service-sector unions were concerned that certain industrial unions with a strong emphasis on organizing would displace them from existing certified bargaining units.<sup>82</sup> There was no consensus among unions about BBB, and some feared that sectoral certification would erode the place of individual unions in collective bargaining and that employer-dominated unions would be the ones to benefit from broader-based bargaining.<sup>83</sup> Others were concerned that it represents a statutory solution to unions’ difficulties in achieving certifications and first contracts.<sup>84</sup> Finally, some in the labour movement viewed the model as akin to the Québec decree system’s extension mechanism which, in their view, might “eliminate the need for people to join a union.”<sup>85</sup> Even supporters of the Baigent-Ready model had – and continue to have – reservations about its feasibility. One key concern is how, in practical terms, to impose a collective agreement on a group of employers, particularly in the case of franchise operations.<sup>86</sup> Another is the challenge for unions to achieve a sectoral designation and initial certification and to also negotiate a first agreement that would be suitable and sufficiently attractive for workers in additional workplaces to choose to join the initially certified unit.<sup>87</sup>

Nonetheless, by the time the government came to decide which recommendations to include in the new labour legislation, the BC Fed had sought adoption of several contentious subcommittee recommendations, including the Baigent-Ready model of BBB. However, the premier advised the BC Fed that the government was willing to adopt only one of the subcommittee’s non-consensus proposals: either the Baigent-Ready model or the replacement

79. Georgetti interview.

80. David Fairey, labour economist and research associate of the Canadian Centre for Policy Alternatives, interview with the author, 15 December 2016.

81. Georgetti interview; MacDonald, “Sectoral Certification,” 276.

82. Wilson interview.

83. Weir interview; Wilson interview.

84. Lanyon interview.

85. Weir interview.

86. Ready interview.

87. Wilson interview.

worker provision – and the BC Fed could choose which one.<sup>88</sup> In what has been characterized as “a historic choice,” a “historic failure,” and a decision made “for all the wrong reasons,” the BC Fed gave up the opportunity to have the Baigent-Ready model included in the new labour legislation.<sup>89</sup> After lengthy debate among the BC Fed’s executive, and then a vote, the replacement worker provision won by a single ballot.<sup>90</sup>

As Georgetti explains, the replacement worker provision was really chosen for “the political optics of the labour movement,” and the choice was partly influenced by the fact that the Ontario government had recently introduced anti-scab legislation, so the feeling was that BC labour “had to have anti-scab legislation.”<sup>91</sup> This outcome likely reflected still-vivid memories many senior union officers had of violent and corrosive disputes on picket lines relating to replacement workers that had occurred in the 1960s, 1970s, and 1980s. As more than one interviewee explained, for many long-time unionists at the BC Fed at the time, reactions to the issue of replacement workers were almost “visceral.”<sup>92</sup> Therefore, even though the BC Fed president may have recognized the importance of the Baigent-Ready model proposal, it was not possible for his view to prevail, given the strength of feeling by many officers about “anti-scab” protection.<sup>93</sup> Since labour was clearly a “divided house” on the issue of BBB, in contrast with unanimity on the replacement worker proposal, there was little pressure on, or incentive for, the government to adopt the Baigent-Ready model.<sup>94</sup> Ultimately, the Baigent-Ready model was not included in the subsequent extensive amendments to the labour legislation that the government introduced in October 1992.<sup>95</sup> The government’s stated reason for not accepting the proposed Baigent-Ready model was the uncertainty of its outcome and the restrictions it would impose on individual employers’ ability to bargain individual collective agreements.<sup>96</sup>

The failure of the Baigent-Ready model proposal has been attributed to strong opposition from the small business community, with these concerns

88. Georgetti interview; Ready interview. See also MacDonald, “New Deal Model,” 278. On the issues of BBB, replacement worker protections, secondary boycott agreements, and picketing, one or more of the special advisers drafted dissents. See *Subcommittee Final Report*, Appendices 2–5.

89. Wilson interview.

90. Georgetti interview; Ready interview.

91. Georgetti interview.

92. Lanyon interview; Wilson interview.

93. Ready interview.

94. Weir interview; Georgetti interview; Fahey interview.

95. Labour Relations Code, SBC 1992, c 82 (BC).

96. “An Introduction to Bill 84 – B.C.’s Proposed New Labour Legislation,” Minister’s Statement, October 1992, 1, cited in MacDonald, “New Deal Model,” 279.

conveyed in Roper's final report dissent. Additional causes identified include lack of interest, weak support, and some opposition from labour; labour's prioritization of anti-scab provisions; and confusion and lack of awareness from all quarters about the model and the BBB concept.<sup>97</sup> MacDonald concludes that this last reason, a general lack of understanding of the meaning or significance of BBB, was among the key reasons this proposal was defeated. She found that some union officers were unaware that BBB was an issue before the subcommittee, and there was significant confusion about the concept and how it might operate among those who were aware of it. Not only was labour ill informed about BBB, but MacDonald found that some government officials were also confused about the Baigent-Ready model.<sup>98</sup> Nonetheless, the model is still regarded as an innovative and powerful one.<sup>99</sup>

### ***Canada Labour Code Reform***

Broader-based and sectoral bargaining arose as a minor issue in the mid-1990s review of collective bargaining under the *Canada Labour Code*, led by arbitrator and former Alberta Labour Relations Board chair Andrew Sims.<sup>100</sup> Struck by federal Minister of Labour Lucienne Robillard in June 1995, the "Sims Task Force" also included Rodrigue Blouin, an industrial relations professor, and Paula Knopf, an arbitrator and former Ontario Labour Relations Board (OLRB) vice-chair.<sup>101</sup>

The Sims Task Force report, issued in January 1996, addressed several aspects of "multi-party collective bargaining" in a chapter devoted to the topic.<sup>102</sup> Overall, the report demonstrated an equivocal attitude toward BBB, stating that "there is nothing inherently wrong with broader based bargaining as long as unions and management remain free to revert to the simpler, single enterprise system if they wish."<sup>103</sup>

97. MacDonald, "New Deal Model," 275–278; Baigent, "What Is Sectoral Bargaining?," 5; Weir interview; Ready interview; Georgetti interview.

98. MacDonald, "Sectoral Certification," 276, 278. Some of this confusion may have arisen from, or been reflected in, the fact that the Baigent-Ready model was variously termed "sectoral bargaining" and "multi-employer bargaining" at different points in the final report and its draft legislation.

99. Wilson interview; Mitchell & Murray, *Final Report*, x.

100. Canada Labour Code, RSC, 1985, c L-2.

101. Human Resources Development Canada, *Seeking a Balance: Canada Labour Code, Part 1, Review* (Ottawa: Public Works and Government Services, 1995) (hereafter cited as *Sims Report*).

102. The chapter specifically addressed geographic certifications, multi-employer bargaining, broader-based bargaining, and sectoral bargaining. Canada, *Canada Labour Code, Part 1, Review: Seeking a Balance*, Chap. 7.

103. *Sims Report*, 79.

Several union submissions to the task force advocated BBB for industries with low union density, intended to foster organizing in industries containing smaller but similar workplaces. These “designated sector” proposals involved labour board designation of a sector identified by geographic scope and type of unit, following which all units certified within that sector would bargain together with an employers’ group, with most proposals contemplating the same union representing all employees in the certified units in the sector. Additional units would be added to any existing sector-wide collective agreement upon certification, and these would participate in the next set of renewal negotiations.<sup>104</sup> These proposals bore clear resemblances to the earlier OFL designated-sector proposal and the Baigent-Ready model. Employers offered little response to these proposals, with objections centring on opposition to facilitating unionization, resistance to employers being required to bargain together, desire to protect the opportunity for wage and cost competition, and objection to newly certified employers being subject to a collective agreement they had not participated in negotiating.<sup>105</sup>

The report dealt differently with multi-employer and single-employer sectoral bargaining. Noting that the issue of multi-employer sectoral bargaining “lacks any widespread consensus or even understanding,” the task force did not recommend multi-employer sectoral bargaining. Instead, it recommended amending existing multi-employer bargaining provisions to ensure that employers could choose to engage in multi-employer bargaining but could also withdraw and revert to individual bargaining in a subsequent bargaining round.<sup>106</sup> Nonetheless, the task force concluded that the idea of broader multi-employer sectoral bargaining “raises a point that, in our view, merits further consideration,” recognizing that, in industries with large employers with multiple worksites, the existing requirement of majority support across the region impedes organizing and could result in certification being imposed on individual worksites against those workers’ wishes. In contrast, it also concluded that “we can see distinct advantages for both labour and management in having the Code allow a single employer but multi-establishment variant to the sectoral bargaining scheme.”<sup>107</sup> Ultimately, the task force recommended adoption of a limited model of BBB, which it labelled “single-employer sectoral bargaining,” recognizing that this model “offers efficiencies to both sides.”<sup>108</sup> Under this model, the labour board could consolidate bargaining for existing certifications of the same employer; subsequent certifications to that employer

104. *Sims Report*, 95–96.

105. *Sims Report*, 96–97.

106. *Sims Report*, 97.

107. *Sims Report*, 97.

108. *Sims Report*, 97, 98.

could later apply to be included in the consolidated bargaining. However, this was not included in the subsequent amendments to the *Canada Labour Code*.

The Sims Task Force was also directed to review BBB recommendations of the Industrial Inquiry Commission into Industrial Relations at West Coast Ports and, specifically, the commission's recommendations regarding geographic certifications.<sup>109</sup> The federal Minister of Labour had appointed the commission in May 1995 to make recommendations for more stable bargaining structures at West Coast ports, against a backdrop of frequent work stoppages. The commission was underway at the time the Sims Task Force was appointed and its final report was issued in November 1995, two months before the final report of the task force. The commission's final report included recommendations to broaden bargaining unit structures in grain longshoring and related port industries.<sup>110</sup> The Sims Task Force disagreed with these recommendations, expressing skepticism that the potential benefit of BBB in reducing serial work stoppages outweighed the likelihood that negotiations would be impeded by issues relating to one part of broader units and that this would encourage government intervention in the form of back-to-work legislation. Moreover, the task force regarded compulsory BBB as being at odds with an increasingly deregulated and competitive transportation industry, concluding, "We find it difficult in such an environment to support what is, in effect, a more regulated labour relations regime in these industries."<sup>111</sup>

### ***British Columbia Labour Relations Code Reform***

After the 1992 subcommittee review, the issue of BBB "went off the radar" in British Columbia for several years.<sup>112</sup> In the meantime, Glen Clark, a former Steelworkers and Ironworkers union organizer, had become premier following Harcourt's February 1996 resignation, leading the NDP to a bare majority government in the May 1996 election. The following July, Minister of Labour John Cashore appointed a committee of special advisers (the LRC Committee) to review the BC *Labour Relations Code* (BC Code), with neutral co-chairs Vince Ready and Stan Lanyon, and two members: union-side lawyer Miriam Gropper and employer-side representative Jim Matkin.<sup>113</sup>

An important backdrop to this review was the government's failed attempt at construction and general labour relations reform earlier that year. The

109. Canada Labour Code, RSC, 1985, c L-2; *Sims Report*.

110. Canada, Industrial Inquiry Commission into Industrial Relations at West Coast Ports, *Report of the Industrial Inquiry Commission into Industrial Relations at West Coast Ports* (Ottawa 1995), 215–217.

111. *Sims Report*, 93–94.

112. Georgetti interview.

113. The LRC Committee was struck pursuant to the section 3 continuing review of the code, a provision introduced into the BC *Labour Relations Code* on recommendation of the subcommittee in 1992.

government had introduced Bill 44, without consultation, in June 1997.<sup>114</sup> Faced with overwhelming business opposition, the government withdrew the bill weeks later and announced it would commence a review of both the construction and general labour relations legislation. The LRC Committee noted that both labour and management had indicated that the Bill 44 episode had increased polarization within the labour relations community, and Lanyon later described it as “a shadow” hanging over the review.<sup>115</sup> The general sense at the time was that the government was unlikely to accept any LRC Committee recommendations to amend the BC Code and that its real interest was, in fact, in the construction labour review – not the general BC Code review.<sup>116</sup> There was also widespread skepticism within labour about the likelihood of obtaining dramatic change to the labour relations structure and doubt about how effective change might be if it did occur, particularly as the government was not seen as willing to push hard for general labour reform at that time.<sup>117</sup>

Broader-based bargaining (referred to as “sectoral bargaining” throughout the review) became one of the primary issues before the LRC Committee and was addressed by a majority of the submissions received by the committee.<sup>118</sup> By the time of the review, the labour movement’s growing awareness of the changing size, scope, and organization of enterprises – particularly the growth of contracted-out work and declining union density – made labour more receptive than before to new forms of representation, including BBB, as a means of countering these changes.<sup>119</sup> Yet a significant lack of understanding of the concept and its implications persisted among unions.<sup>120</sup> A discussion paper introduced to labour representatives at a Canadian Labour Congress winter school shortly before the review commenced was received with “a great deal of puzzlement”; one labour researcher recalls that it was as if the participants had

114. Stan Lanyon, “British Columbia Labor Policy Proposals,” *Perspectives on Work* 2, 2 (1998): 29; Bill 44, Labour Statutes Amendment Act, 1997, 2d Sess., 36th Parl., British Columbia, 1997 (first reading 25 June 1997, withdrawn July 1997).

115. British Columbia, Labour Relations Code Review Committee (LRCRC), *Managing Change in Labour Relations: The Final Report* (Victoria: Minister of Labour, 1998), Part 2.B; Lanyon, “British Columbia Labor Policy Proposals,” 29. The LRC Committee also noted that this “context ... resulted in Bill 44 defining the issues before us [and] the parties, to a large extent, focused their submissions on those issues.” LRCRC, *Managing Change: Final Report*, Part I.B.3.

116. Georgetti interview.

117. Weir interview.

118. British Columbia, Labour Relations Code Review Committee (LRCRC), *Managing Change in Labour Relations: A Discussion Paper* (Vancouver: LRCRC, 1998), sec. 3.2(a).

119. Weir interview.

120. Wilson interview.



been “presented ... with a foreign concept that was so different from the world they were familiar with that they had trouble understanding it.”<sup>121</sup>

In front of the LRC Committee, unions pressed for legislative solutions to structural barriers to collective representation – primarily BBB and broader successor rights provisions. Unions contended that for smaller workplaces, particularly in the service sector, BBB provisions were required to address barriers to access to union representation that exist for smaller workplaces.<sup>122</sup> Nonetheless, the labour movement clearly had not yet reached a consensus on, nor even fully come to grips with, the issue of BBB. Submissions proposed a variety of forms; most unions advocated for adoption of the Baigent-Ready model, although some unions contended that BBB should be extended to all employees, not only those in historically underrepresented sectors.<sup>123</sup> It appears the United Steelworkers of America, District 3, was the only union proposing a different, innovative approach to BBB.<sup>124</sup> Overall, unions’ interest tended to focus on contracted-out services, such as janitorial work, rather than regarding BBB as a more broadly applicable model for restructuring collective representation and bargaining.<sup>125</sup>

Employers “categorically opposed” both BBB and expanded successorship provisions. As in 1992, objections focused on the prospect of limits to competitive flexibility, imposition of “one size fits all” collective agreements, and employers’ convictions that BBB would have a particularly strong negative effect on small and medium-sized enterprises.<sup>126</sup> Disagreement about what BBB entailed persisted within the employer community, as the LRC Committee noted: “Some employers maintain that enterprise bargaining means one employer negotiating with one union, and that anything beyond this model is sectoral bargaining. They view multi-employer bargaining, coordinated bargaining, bargaining for master agreements, picking up the master agreement, and province-wide bargaining as unacceptable ‘sectoral models.’”<sup>127</sup> These employer attitudes existed even though many of these bargaining structures had long been present in the province’s labour relations without having been

121. Brian Shell & John O’Grady, “Taking Wages Out of Competition: Models and Options for Sectoral Initiatives,” discussion paper presented to the BC Federation of Labour on behalf of United Steelworkers of America, 1997; labour researcher interview.

122. LRCRC, *Managing Change: Discussion Paper*, Section 2.2(b)(i)–(ii).

123. LRCRC, *Managing Change: Final Report*, Part 2.C.3.

124. This proposal involved a tripartite committee determination and enforcement of minimum standards orders covering an array of matters, applicable as a floor for all employees, unionized or not, and with the Labour Board as final adjudicator if necessary. LRCRC, *Managing Change: Final Report*, Part 2.C.3.

125. Wilson interview.

126. LRCRC, *Managing Change: Discussion Paper*, Section 2.2(b)(i)–(ii); LRCRC, *Managing Change: Final Report*, Part 2.C.3.

127. LRCRC, *Managing Change: Discussion Paper*, Section 2.b.ii.

condemned as unacceptable forms of bargaining.<sup>128</sup> The LRC Committee stated further, “We believe that sectoral bargaining, along with other sectoral strategies, have been devalued, in part because of the shift to global economies, and in part because of an over-emphasis on labour costs as the major impediment to successful competition. We encourage the business community to look at other economies, notably in Europe, where it is generally agreed that sectoral strategies enhance industry’s ability to compete.”<sup>129</sup> In its January 1998 discussion paper, the LRC Committee explicitly recognized a private-sector representation gap, intensified by a shift toward low-wage service-sector employment, and stated that “these issues are serious enough to warrant specific attention to the problem of sectoral bargaining and successorship.”<sup>130</sup> However, preferring non-statutory solutions, and noting that further research and discussion were necessary, the LRC Committee proposed establishing sectoral, joint labour-management industry advisory councils that would either be under existing BC Code provisions for ministerial advisory councils or be non-statutory and voluntary.<sup>131</sup>

Final reports for both reviews were issued in late February 1998.<sup>132</sup> Although the construction industry review recommendations were subsequently adopted, including a recommendation to reinstitute BBB in parts of that sector, none of the LRC Committee’s recommendations were enacted. The LRC Committee emphasized non-statutory approaches and solutions and repeatedly mentioned the polarized context of the review, inflamed by Bill 44 and the economic situation. Although the LRC Committee did not recommend legislating BBB “at this time,” as Lanyon later noted, the committee did not “reject [it] outright” but instead pointed out that “clearly much more work needs to be done by academics, government, and the parties in looking at these types of regulatory schemes.”<sup>133</sup>

However, in its final report the LRC Committee continued to recommend sectoral joint industry advisory councils, indicating that with its

128. LRCRC, *Managing Change: Final Report*, Part 4.B.7.

129. LRCRC, *Managing Change: Final Report*, Part 4.B.

130. LRCRC, *Managing Change: Discussion Paper*, Section 2.2(b)(i).

131. LRCRC, *Managing Change: Discussion Paper*, executive summary, Section 2.3(c).

132. British Columbia, Labour Relations Code Review Committee (LRCRC), *Report of the Construction Industry Review Panel: Looking to the Future, Taking Construction Labour Relations into the 21st Century* (Victoria: Ministry of Labour, 1998); LRCRC, *Managing Change: Final Report*.

133. Notably, the public opinion research commissioned by the LRC Committee found that 54 per cent of respondents supported BBB (defined in the question as “setting basic wages and benefits within an industry”), 20 per cent opposed it, and 24 per cent were unsure about it. The survey also found “overwhelming support” for successorship provisions. LRCRC, *Managing Change: Final Report*, Recommendations 4, 7, Part 3.B; Lanyon, “British Columbia Labor Policy Proposals,” 31.

recommendations “government moves away from its role of referee or regulator of these relationships to that of facilitator.”<sup>134</sup> The LRC Committee also expressed the belief that “as other innovative strategies are put into place that involve joint labour-management collaboration at the industry or sectoral level, the issue of sectoral bargaining will cease to create the alarm and confusion that currently exists.”<sup>135</sup>

Failure to achieve legislative change in support of BBB in British Columbia in 1998 has largely been attributed to vigorous opposition from the small business community, although MacDonald suggests that the lack of consistency among union submissions contributed to this failure, as did the government’s own lack of interest in BBB.<sup>136</sup> Thereafter, the political situation in British Columbia changed significantly. The Liberal Party achieved an overwhelming majority in the 2001 provincial election and retained a majority government until the spring 2017 election. Worker-friendly labour law reform was not on this government’s agenda, and BBB did not arise as an issue during this period.

## Revival of Interest in Broader-Based Bargaining

### *Ontario’s Changing Workplaces Review*

Broader-based and sectoral bargaining next arose in Ontario during the Changing Workplaces Review of the OLRA and ESA that commenced in May 2015 and culminated in Bill 148, introduced in July 2017 and passed in late November 2017.<sup>137</sup> To this point the province’s Liberal government, in power since 2003, had undertaken no review of, and had made only limited amendments to, the OLRA.<sup>138</sup> However, the Liberals had committed to reviewing labour and employment legislation after their majority re-election in June 2014, and some unions had vigorously pressed for a combined review of the OLRA and ESA.<sup>139</sup>

In February 2015 Minister of Labour Kevin Flynn appointed special advisers John Murray, a former employer-side lawyer and judge, and Michael Mitchell, an arbitrator and former union-side labour lawyer, to lead the review.

134. LRCRC, *Managing Change: Final Report*, executive summary, Recommendations 4, 7.

135. LRCRC, *Managing Change: Final Report*, Part 4.B.

136. MacDonald, “New Deal Model,” 260–262.

137. Bill 148, Fair Workplaces, Better Jobs Act, 2017, so 2017 c 22.

138. See Bill 144, Labour Relations Statute Law Amendment Act, 2005, so 2005, c 15.

139. Kathleen Wynne, “Building Ontario Up,” Speech from the Throne to open the 41st Parliament of Ontario, Office of the Premier, Toronto, 3 July 2014, <http://news.ontario.ca/opo/en/2014/07/building-ontario-up-speech-from-the-throne.html>; Wynne, “2014 Mandate Letter: Labour,” premier’s instructions to the minister on priorities for the year 2014, Office of the Premier, Toronto, 2014, <http://www.ontario.ca/page/2014-mandate-letter-labour>; Wilson interview.

The CWR's mandate explicitly excluded consideration of construction labour relations, minimum wage, or matters being addressed by other independent review processes, such as pay equity and broader public-sector bargaining structures.<sup>140</sup>

The context of this review differed significantly from Ontario's labour law reform exercise in the 1990s. Not only was pay equity not an element in this review, but broader notions of labour rights under the Charter had new relevance. A series of Supreme Court of Canada cases issued since 2001, and culminating in a trio of decisions issued in early 2015, reversed decades of jurisprudence, finding that the Charter freedom of association encompassed protection of the process of collective bargaining and recognizing strikes as not only an essential element of the bargaining process but also protected by the Charter freedom of expression.<sup>141</sup>

Although the CWR was not plagued with the internal problems of the 1990s OLRA review, deep animosity toward the Liberals led some unions, particularly in the public sector, to be reluctant to participate. This animosity was related to the Liberal government's contentious imposition of mandatory central bargaining in parts of the public sector.<sup>142</sup>

Proximity to the provincial election scheduled for June 2018 gave rise to skepticism about the government's commitment to labour law reform, with suspicions that to the Liberals the process was more of a strategic political exercise. The upcoming election may also have influenced the NDP's approach to the CWR, which one labour researcher described as unsupportive, uninterested, cynical, and giving the impression that the NDP "hop[ed] it would fail." In his view, the review would have been able to achieve more if the NDP had supported the process.<sup>143</sup>

At the outset of public consultations, the special advisers explicitly sought input as to whether BBB was "required either generally or for certain industries."<sup>144</sup> However, few submissions responded to this request, and fewer

140. Ontario, "Terms of Reference – Changing Workplaces Review," Ministry of Labour, Training and Skills Development, last reviewed February 2017, <https://www.labour.gov.on.ca/english/about/workplace/terms.php>.

141. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 2(b), (d); *Mounted Police Association of Ontario v Canada* (Attorney General), 2015 SCC 1; *Meredith v Canada* (Attorney General), 2015 SCC 2; *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4.

142. These changes were most significant in the education sector. See, for example, the successful Charter challenge of Bill 115, *Putting Students First Act*, 2012, SO 2012, c 11, which imposed centralized agreements in this sector: *OPSEU v Ontario*, 2016 ONSC 2197; and the subsequent Bill 122, *School Boards Collective Bargaining Act*, 2014, SO 2014, c 5, which established mandatory centralized bargaining in this sector.

143. Wilson interview.

144. Ontario, *Changing Workplaces Review: Guide to Consultations* (Toronto: Ministry of Labour, May 2015), 18.

still offered specific input, instead often simply expressing general support for BBB.<sup>145</sup> Notably, the OFL submission was silent on this issue.<sup>146</sup> Instead, during early stages of the CWR process most of the labour movement, including the OFL, had focused on incremental change to the OLRA and a shortlist of priority issues.<sup>147</sup> As one labour researcher explains, the labour movement had made so few gains in labour legislation for so long in Ontario that there was no sense that significant advances could be made. Thus, many unions concentrated on trying to “stop the decline ... and get a couple of little things.”<sup>148</sup> Only the Steelworkers and Unifor submissions offered detailed responses on the BBB issue.<sup>149</sup> The Steelworkers’ National Office submission urged adoption of a slightly modified Baigent-Ready model and also sought a provision to consolidate existing bargaining units of a single employer.<sup>150</sup> Unifor’s submission contained extensive and detailed BBB submissions and advocated strongly for a sectoral approach to both minimum standards regulation and collective bargaining.<sup>151</sup> Unifor, convinced that the incremental change sought by much of the labour movement was insufficient, had established a working group that devoted over six months to preparing the union’s CWR submission. According to the coordinator of this working group, its attitude was “Let’s make a seminal document. Let’s go for broke here.”<sup>152</sup>

Two key ideas shaped Unifor’s proposals. The first was that it was necessary to “secure the floor” of workplace standards, in order to make organizing and bargaining possible in precarious sectors. As the BBB working group coordinator explained, if labour is always “filling in the collapsing floor” under precarious workers, it cannot move forward in organizing and improving conditions for those workers. The second formative concept arose from Unifor’s

145. Submissions can be accessed online; see “Phase One: Public Submissions to the Changing Workplaces Review,” Industrial Relations and Human Resources Library digital collections, Centre for Industrial Relations and Human Resources, University of Toronto (hereafter cited as IRHR), <http://cirhr.library.utoronto.ca/digital-collection/changing-workplaces-review/public-submissions>.

146. See OFL, “Labour. Law. Reform: A Job Should Be a Pathway out of Poverty,” submission to Ontario’s Changing Workplaces Review, Toronto, 18 September 2015.

147. Wilson interview.

148. Wilson interview.

149. Unifor developed a new model, addressed below. The Steelworkers pressed for adoption of the Baigent-Ready model. United Steelworkers (USW), “Submission by the United Steelworkers: Ontario’s Changing Workplaces Review Consultation Process,” Toronto, 18 September 2015.

150. This submission proposed there be no minimum threshold number of employees in a workplace for the model to apply. USW, “Submission,” 31–33.

151. Unifor, “Building Balance, Fairness, and Opportunity in Ontario’s Labour Market: Submission by Unifor to the Ontario Changing Workplaces Consultation,” Toronto, September 2015, 104–130.

152. Wilson interview.

foundational principles, which included the notion that labour's role was to speak for and represent all workers, whether or not they were unionized. However, this perspective had opponents both among other unions and within Unifor itself. Opponents contended that if workers wanted union protection and rights they should join unions, and that an all-worker approach meant that many workers would never unionize. Unifor's submission included several BBB proposals, including a proposal for single-employer multi-site bargaining, certification covering all franchisees in a geographic area of a common parent company, a proposal for non-worksite-based occupational representation, and an innovative proposal founded in an amendment to the ESA. Unifor had not believed, until the CWR process was already well advanced, that OLRA amendments facilitating BBB might be politically possible, so the union's most ambitious proposal relied on modifications to the ESA rather than the OLRA.<sup>153</sup>

The CWR interim report, issued in late July 2016, set out nine options for potential BBB amendments to the OLRA. In addition to maintaining the status quo, options included proposals for multi-employer, multi-location certifications; extension of certifications or agreements; and BBB models for specific industries or sectors. Some options involved detailed proposals, and others were explicitly based on the Baigent-Ready model, the Québec decree system, or the *Industrial Standards Act* (see Table 1).<sup>154</sup> Option 5, which the special advisers had developed, was set out in greatest detail. This new proposal modified the Baigent-Ready model by providing that multi-employer, multi-location certification, voting, and negotiations would occur on a sector-wide basis, and an applicant union would be required to demonstrate to the labour board its commitment to sectoral representation, potentially including demonstration of a resource commitment sufficient to confirm the union's willingness to attempt to organize the entire sector.

The interim report sought input from the community on these options, and a second phase of written submissions and stakeholder meetings followed. Unifor, at least, was surprised by the interim report's clear willingness to consider introducing BBB within the OLRA.<sup>155</sup> Although the interim report elicited more union input about BBB than had been received in the first phase of submissions, relatively few unions engaged substantially with the issue. Most unions, and the OFL, simply indicated support for several of the options in their phase 2 submissions.<sup>156</sup>

153. Wilson interview.

154. Ontario, Ministry of Labour, *Changing Workplaces Review – Special Advisors' Interim Report*, 113–119, 122–126.

155. Wilson interview.

156. Submissions are available online; see "Phase Two: Public Submissions to the Changing Workplaces Review Interim Report," IRHR, <http://cirhr.library.utoronto.ca/digital-collection/changing-workplaces-review/public-submissions-phase-two>. As an exception, the Ontario Nurses' Association (ONA) made an additional submission calling for BBB tailored to the health

**Table 1. Changing Workplaces Review, Interim Report, Broader-Based Bargaining Options**

Option	Summary
1	Maintain status quo.
2	Model providing for extension of negotiated provisions across a sector. Reflects Québec decree system, <i>Industrial Standards Act</i> , and Unifor’s proposal.
3	Accretion of single-location certifications of single franchisor/franchisee units with the same parent company leading to multi-location bargaining.
4	Multi-employer, multi-location certification and bargaining, arising from single-employer, location-by-location certifications and based on Baigent-Ready model.
5	New proposal for multi-employer, multi-location certification and bargaining, involving sector-wide certification.
6	New proposal based on accretion approach to BBB in the construction industry, permitting employer bargaining agencies in defined sectors and geographic areas, resulting unions being compelled to bargain sector-wide agreements. Aimed at industries with existing, but fragmented, union representation and intended to support employer interests in BBB structures and to avoid union “whipsawing” and “leapfrogging.”
7	Proposal, with no details provided, to develop a model aimed at vulnerable workers in precarious employment, such as home-care workers or (if exclusions from the OLRA were removed) agricultural, domestic, or horticultural workers, where Wagner model is ineffective.
8	Model based on <i>Status of the Artist Act</i> approach, to apply to freelance workers and dependent contractors. No specifics provided.
9	Create provisions of the OLRA applying to media industry, artists, and performers. No specifics provided.

Source: Ontario, Ministry of Labour, *Changing Workplaces Review – Special Advisors’ Interim Report* (Toronto: Ministry of Labour, 2016), 122–126.

Although it appeared that the special advisers were most seriously contemplating recommending option 5, the proposal that they had developed, several unions raised concerns about that approach and regarded option 4, which closely resembled the Baigent-Ready model, as more incremental, less disruptive, and more practical. Concerns were, among others, that option 5 would have sparked inter-union rivalries because it would result in either a single union or a council of unions representing a sector; that the sector-wide certification element would require a state of readiness to immediately deal with an entire sector that few unions would be able to muster; that it would produce

care sector. ONA, “Supplemental Submissions to the Ontario Changing Workplaces Review,” Toronto, 25 February 2016.



a “large cultural change for many affected employers, and for workers”; and that sector-wide certification would present a substantial barrier to accessing sectoral certification.<sup>157</sup>

Notably, several unions expressed reservations about BBB in general, in terms of protecting existing union representation rights. They urged that any introduction of BBB be limited to sectors without significant existing union representation and that new BBB structures not displace established bargaining arrangements.<sup>158</sup> Some unions also objected to sectoral certification models that might prevent unions from organizing in particular sectors.<sup>159</sup> One of the province’s largest public-sector unions, OPSEU, emphasized that BBB should be voluntary for unions and not forced upon them as it had been in the education sector.<sup>160</sup>

The few employer submissions that addressed the issue opposed BBB and advocated for the status quo.<sup>161</sup> Opposition centred on assertions that such models are inappropriate for the private sector, that BBB “takes away the creativity, the competitive advantage that companies seek to prosper,” and that it would conflict with different wage structures and hierarchies at different workplaces.<sup>162</sup> Several employer associations expressed concern about the disadvantage smaller employers would face, even within a single franchise system, in a bargaining council;<sup>163</sup> others feared that smaller and medium-size businesses would lack sufficient resources to bargain with larger unions and

157. Wilson interview; Unifor, “Response to the Interim Report of the Ontario Changing Workplaces Review,” Toronto, October 2016, 30; ONA, “Response to the Ontario Changing Workplaces Review Interim Report,” Toronto, 14 October 2016, 7.

158. See Society of Energy Professionals, submission for Changing Workplaces Review Interim Report, Toronto, 14 October 2016, 12; Canadian Union of Public Employees (CUPE), “Changing Workplaces Review: Response to the Interim Report,” by Fred Hahn, Toronto, 7 October 2016, 16.

159. Ontario Public Service Employees Union (OPSEU), “Supporting Positive Change for Working People in Ontario,” submission the Government of Ontario’s Changing Workplaces Review, Toronto, 5 October 2016, 15; CUPE, “Changing Workplaces Review: Response,” 17.

160. OPSEU, “Supporting Positive Change,” 15.

161. See, for example, ACS Coalition, submission for Changing Workplaces Review Interim Report, by Steven Leonoff, David Seymour & Michelle Porteous, Toronto, 14 October 2016; Maple Leaf Foods, additional submission for Changing Workplace Review, by Brigid Lumholst-Smith, Mississauga, 14 October 2016; McDonald’s Belleville/Madoc, McDonald’s Belleville & McDonald’s Quinte West/Brighton, submission for Changing Workplaces Review, letter from Bob Doyle, Colin McLean, Ken Schmidt & Cynthia Schmidt, 26 September 2016.

162. Maple Leaf Foods, additional submission, 2; McDonald’s, submission, 5.

163. Canadian Franchise Association, “The Modern Workforce: The Contribution and Future Opportunity of Franchising in Ontario,” Toronto, 18 September 2016, 14–15; Restaurants Canada, “Response to Changing Workplaces Review Interim Report,” Toronto, 14 October 2016, 7–8; Keep Ontario Working, with Philip Cross, *Reform that Works: A Call for Evidence-Based Workplace Law Modernization in Ontario* (Toronto: Keep Ontario Working, 2016), 35.

that larger firms would be advantaged over small and medium firms as they would be more able to manage the costs of a BBB bargaining structure, which may lead to smaller businesses closing, thereby reducing “employee choice” of types of workplaces.<sup>164</sup>

Public-sector employer associations focused on the potential for BBB to change the balance of labour relations power, thus increasing the risk of strikes.<sup>165</sup> Notably, while the Ontario Hospital Association opposed the interim report’s options, it recommended mandatory, statutory union councils for centralized bargaining in the hospital sector as a means of rationalizing bargaining structures.<sup>166</sup>

In late May 2017, the CWR final report was released. It dismissed extension models, including the extension model option based on Unifor’s proposal (Table 1, option 2), as being “out of keeping with Ontario’s history and culture” and concluded that determination of some workplace terms by the unionized sector, to be imposed on the non-union sector, was neither practical nor likely to be accepted in the absence of a democratic means for employees to consent to these terms.<sup>167</sup> The final report also rejected “multi-employer bargaining models” based on the Baigent-Ready model (Table 1, options 4 and 5). While noting that these models are “creative and worthy of further exploration,” the special advisers concluded that it was not clear that this approach would work in sectors with little history of collective bargaining. The report further noted that “no jurisdiction that we are aware of has imposed a mandatory multi-employer collective bargaining regime on employers in a sector without any history of collective bargaining in that sector. Such an option, therefore, calls for a considerable degree of caution and careful assessment.”<sup>168</sup> One concern was that, in multi-employer bargaining structures, larger businesses might collude to increase labour costs, which might remove smaller businesses from the market. A further concern was whether, under these models, unions would be able to gain sufficient bargaining power against a heterogeneous group of employers.<sup>169</sup>

The report did not specifically address option 6, the construction accreditation model. The special advisers recommended that the government conduct

164. Restaurants Canada, “Response,” 7–8; Tourism Industry Association of Ontario, “Submission to the Changing Workplaces Review,” by Beth Potter, Toronto, n.d. (2016), 2.

165. Council of Ontario Universities, “Submission on the Changing Workplaces Review, Special Advisors’ Interim Report,” by Peter Gooch & Katarina Todić, Toronto, 14 October 2016, 5.

166. Ontario Hospital Association, “Response to the Changing Workplaces Review Interim Report,” Toronto, 14 October 2016, 9.

167. Mitchell & Murray, *Final Report*, 354.

168. Mitchell & Murray, *Final Report*, 355–356.

169. The report also noted there was “virtually no support for Option 5 in the submissions.” Mitchell & Murray, *Final Report*, 355–356.

inquiries and consultations regarding options 7, 8, and 9 (see Table 1), which entailed new models for industries with vulnerable and precarious workers in which the Wagner model is ineffective; for freelancers and dependent contractors; and for the media industry.<sup>170</sup> The final report did recommend amending the OLRA to adopt a BBB model that would be applicable only to franchisees of a single common franchisor and that did not require including the franchisor in the bargaining structure. This recommendation appeared to be based on option 3.<sup>171</sup> The most innovative BBB recommendation that appeared in the final report – one that reflected Unifor’s key phase 1 proposal and was reminiscent of Ontario’s former *Industrial Standards Act* – had not appeared among the interim report’s options. The special advisers recommended amending the ESA to establish “sector committees” to provide for sectoral regulation of workplace standards. They explained that this approach was more feasible and “a better and more inclusive way to accomplish some improvement in outcomes for employees in smaller non-unionized workplaces” than an extension model, as it would allow for direct employee and employer input, with government regulation.<sup>172</sup>

Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, was introduced and passed first reading on 1 June 2017, a week after the final report was released. It contained no BBB provisions among the proposed amendments to the OLRA or ESA but did include two provisions giving the OLRB limited authority to consolidate bargaining units.<sup>173</sup> The NDP’s reaction to Bill 148 has been described as “muted” and the party offered no substantial response to the bill until mid-August, at which time NDP leader Andrea Horwath announced proposed amendments.<sup>174</sup> These amendments, which were not tabled until November 2017, focused on the ESA, with limited OLRA proposals and no mention of BBB.<sup>175</sup> Bill 148 was significantly amended following two rounds of public consultations held in the summer and fall of 2017 and during second

170. Mitchell & Murray, *Final Report*, 364–366.

171. Mitchell & Murray, *Final Report*, 360–362. The final report also included recommendations to expand the scope for consolidation and amendment of bargaining units, distinct from the issue of BBB (see 351–352).

172. Mitchell & Murray, *Final Report*, 354.

173. Bill 148, *Fair Workplaces, Better Jobs Act, 2017*, so 2017, c 22, ss. 15.1 and 15.2 (first reading).

174. Chris Grawey, “Ontario Labour Law Review Processes: 1990 to 2017,” Canadian Foundation for Labour Rights, June 2018, 35–36, <http://labourrights.ca/research-publications/ontario-labour-law-review-processes-1990-2017>; Ontario NDP, “NDP Leader Horwath Pushes for Major Labour Reforms,” media release, 10 August 2017, <https://www.ontariondp.ca/news/ndp-leader-horwath-pushes-major-labour-reforms-ontario-ndp>.

175. Ontario NDP, “Horwath Determined to Improve Working Conditions for All,” media release, 8 November 2017, <http://www.ontariondp.ca/news/horwath-determined-improve-working-conditions-all>.

reading. Consequently, one of the bargaining unit consolidation provisions was dropped and the second was narrowed substantially. Bill 148 received Royal Assent on 27 November 2017, and the majority of amendments came into force on 1 January 2018.<sup>176</sup>

Following the June 2018 election of the Progressive Conservative Party of Ontario, Bill 47 proposed repealing or replacing most of the Bill 148 amendments. Interestingly, Bill 47 provided for greater scope for consolidation of bargaining units than did Bill 148, by proposing to repeal the Bill 148 consolidation provisions and replace them with OLRB power to consolidate units certified to the same or different unions of the same employer where the existing units are “no longer appropriate for collective bargaining.”<sup>177</sup> This would essentially adopt the *Canada Labour Code* consolidation provisions, to which Ontario unions had objected during the CWR review as a threat to established representation rights. The OFL and other unions objected to these consolidation provisions, contending that these provisions would cause instability because of conflict between unions and arguing that loss of workers’ ability to select their bargaining agent undermines their freedom-of-association rights.<sup>178</sup>

### **Alberta Labour Code Reviews**

In July 2002, Alberta Human Resources and Employment Minister Clint Dunford appointed a committee composed of three members of the legislative assembly (MLA Committee) to assess whether review of the province’s *Labour Relations Code* (Alberta Code) should be undertaken.<sup>179</sup> Following consultations during the summer of 2002, the MLA Committee submitted its final report to the minister in late November of that year. The government accepted the final report’s recommendations that no general review of the Alberta Code be undertaken but that specific provisions merited review.<sup>180</sup> This review did not address BBB.

176. Fair Workplaces, Better Jobs Act, 2017, SO 2017, c 22 (ON). These amendments permitted (1) consolidation of newly certified units with existing units where both the bargaining agent and the employer were the same, and (2) consolidation of existing units with different bargaining agents but the same employer, where all parties consented.

177. Bill 47, Making Ontario Open for Business Act, 2018, SO 2018, c 14, Schedule 2, s 6.1.

178. OFL, *Do the Right Thing: Stand Up for Workers: Submission to the Standing Committee on Finance and Economic Affairs* (Toronto: OFL, November 2018), 12, 13, <http://ofl.ca/wp-content/uploads/2018-11-15-SM-Bill-47.pdf>; Unifor, *Bill 47, Making Ontario Open for Business Act: Submission to the Standing Committee on Finance and Economic Affairs* (Toronto: Unifor, 15 November 2018), 7, <http://www.unifor.org/sites/default/files/brief-statements/uniforbill47submissionfinal.pdf>.

179. Labour Relations Code, RSA 2000, c L-1 (AB).

180. Alberta, Government MLA Committee, *Final Report: Government MLA Committee Considering a Review of the Labour Relations Code* (Edmonton, November 2002); Government of Alberta, “Labour Relations Code Is Working Well; Committee to Study Construction Sector

Neither BBB nor labour law reform returned to the agenda in this province for another fifteen years, after the Progressive Conservatives – in power since 1971 – were displaced by an NDP government. In March 2017, Alberta's recently elected government announced a review of the Alberta Code and the province's *Employment Standards Code*.<sup>181</sup> This was followed by a brief, five-week consultation period, resulting in Bill 17, which was introduced in late May and passed early the next month.<sup>182</sup> Andrew Sims, former chair of the Alberta Labour Relations Board, provided technical advice on the review. Although Sims' mandate letter identified ten specific areas of the Alberta Code to be reviewed, these did not include BBB, and the government made it clear that it would not entertain significant innovations in the specified areas.<sup>183</sup> As Sims told the press, "This is not a cutting-edge, lead-the-country reform. ... It is in most respects a bring-the-best-experiences-from-elsewhere to Alberta."<sup>184</sup>

The Alberta Federation of Labour's submission included a general statement supporting sectoral bargaining but made no specific proposal, instead simply requesting that the government "add the opportunity for unions in a recognizable sector of the economy to apply to the Board to bargain sectorally and/or in groups."<sup>185</sup> Not surprisingly, particularly given the significant amendments necessary for Alberta's workplace legislation to catch up to the norm elsewhere in the country, BBB was not a significant issue in this review and the resulting Alberta Code amendments included no BBB provisions.

### ***Revisiting British Columbia's Labour Relations Code***

During the sixteen years of Liberal rule in British Columbia, which had begun in 2001, the province's labour movement focused on simply "trying to defend the store" and "were just trying to hang on [while] sustaining some pretty heavy losses in terms of labour laws." Specifically, "most of the focus was simply on defending and trying to get back to some basic sort of ideas about bargaining

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Practices," news release, 8 July 2003, <http://www.gov.ab.ca/acn/200307/14747.html>.

181. Labour Relations Code, RSA 2000, c L-1 (AB); Employment Standards Code, RSA 2000, c E-9 (AB).

182. The Fair and Family-Friendly Workplaces Act, SA 2017, c 9 (AB).

183. Christina Gray to Andrew Sims, 13 March 2017, mandate letter, Alberta Minister of Labour [no longer online]; Cameron Dykstra, director of research, Alberta Federation of Labour, interview by the author, 1 May 2018.

184. Michelle Bellefontaine, "Labour, Employment Code Overhaul Brings Alberta Law into 'Mainstream,'" *CBC News*, 24 May 2017, <http://www.cbc.ca/news/canada/edmonton/labour-employment-code-overhaul-brings-alberta-law-into-mainstream-1.4130059>.

185. Cameron Dykstra, interview by the author, 26 April 2018; Alberta Federation of Labour, "Submission to the Labour Relations Code Review," Edmonton, 2017, 34. However, an appendix to this submission referred to several earlier BBB proposals, arguing that BBB may be an appropriate policy response to precarious work and that such bargaining structures have "ample precedent."

and trying to defend some semblance of collective bargaining.”<sup>186</sup> Although the Liberal government undertook two BC Code reviews during its tenure, in 2003 and 2007, neither BBB nor the Baigent-Ready model in particular appear to have been either raised or addressed in either review.<sup>187</sup>

A historically close provincial election in May 2017 produced no majority, and after the NDP’s non-confidence motion passed in late June, the party was invited by the Lieutenant-Governor to form a minority government. To retain power, this minority government depends upon an NDP–BC Green Party “confidence and supply” agreement.<sup>188</sup> In early February 2018, the NDP government announced that a review of the BC Code would be undertaken by a tripartite panel of special advisers: arbitrator Mike Fleming, employer-side counsel Barry Dong, and union-side counsel Sandra Banister (Review Panel). Although the Review Panel was given a broad mandate, it was also clear that the Minister of Labour was not prepared to undertake a review on the scale of the recent Ontario CWR. The government appeared to be prepared to act on some long-standing concerns, and there was a sense of urgency to amending the legislation.<sup>189</sup> The process included seeking written submissions and holding regional meetings in the spring, with a final report to be submitted to the government in August 2018.

Both labour and employers addressed BBB in this review, although the Review Panel noted that they “conflate[d] the concepts of multi-employer certification and multi-employer bargaining.”<sup>190</sup> Several union submissions dealt with BBB, with many emphasizing that British Columbia, unlike Ontario, has a long and established history of BBB structures in both its public and private sectors.<sup>191</sup> Review Panel members had asked the labour community about

186. Weir interview.

187. British Columbia, LRCRC, *Report of the B.C. Labour Relations Code Review Committee Regarding the Role of Members of the Labour Relations Board* (Victoria: Ministry of Labour, 2007); British Columbia, LRCRC, *Report of the B.C. Labour Relations Code Review Committee to the Minister of Skills Development and Labour* (Victoria: Ministry of Labour, 2003).

188. British Columbia, “2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus,” 30 May 2017, <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/government-communications/casa>.

189. Anita Zaenker, director of organizing, BC Fed, interview by the author, 24 May 2018.

190. Michael Fleming, Sandra Banister & Barry Dong, “A Report to the Honourable Harry Bains Minister of Labour: Recommendations for Amendments to the Labour Relations Code,” Labour Relations Code Review Panel, Victoria, 31 August 2018, 17.

191. Unifor, “Make It Fair: Restoring Balance, Fairness and Opportunity in B.C.’s Labour Market,” Vancouver, 20 March 2018, 5; Health Sciences Association (HSA), “Submission to the Labour Relations Code Review Panel: Bringing Back Balance to Labour Relations in British Columbia,” New Westminster, 20 March 2018, 1; Migrant Workers Centre (MWC), “Submission to the Section 3 Panel Reviewing the British Columbia Labour Relations Code,” Vancouver, March 2018, 6.



BBB;<sup>192</sup> however, most submissions simply included a general call for multi-employer sectoral certification but without a specific proposal or any details. Several specified that this type of certification be available only to “traditionally difficult to organize sectors.”<sup>193</sup> Other submissions called for a committee of special advisers to be struck to examine this issue and to make recommendations for BBB for franchisees.<sup>194</sup>

The first specific BBB proposal, offered by United Food and Commercial Workers, Local 1518, suggested BBB in the franchise context, based on one of the Ontario CWR final report recommendations.<sup>195</sup> Two other organizations, the Migrant Workers’ Centre and the Vancouver Committee for Domestic Workers’ and Caregivers’ Rights, also offered specific proposals: these were influenced by existing broader-based, centralized bargaining structures in British Columbia’s public sector and a BBB proposal developed in the early 1990s by a domestic workers’ organization in Ontario. The first proposed a two-tier BBB representation and bargaining structure to apply to caregivers in the private sector, modelled on the statutory structure existing in British Columbia’s publicly funded health and community social services sector.<sup>196</sup> The second contemplated mandatory province-wide bargaining (including sectoral certification and bargaining), employing the central workers’ registry existing under the BC ESA and including establishment of a tripartite standards committee under the BC Code to negotiate, set, and enforce labour and employment standards for the sector.<sup>197</sup> Such standards would be subject to government approval, before being enacted as regulations.

Notably, neither the submission by the BC Fed nor those of several other key organizations and unions made any reference to BBB.<sup>198</sup> However, the BC

192. Zaenker interview.

193. CUPE British Columbia Division, “Submission to the Section 3 Panel Regarding British Columbia *Labour Relations Code* Reform,” Burnaby, 20 March 2018, 6; British Columbia Teachers’ Federation, “Submission to the Labour Relations Code Review Panel,” by Glen Hansman, Vancouver, 16 March 2018, 6; BC Government and Service Employees’ Union, “Submission to the Labour Relations Code Review Panel,” by Stephanie Smith, Burnaby, 20 March 2018, 3, 7.

194. Hospital Employees’ Union, “Labour Relations Code Review: Submission to the Special Advisers to the Minister of Labour,” Burnaby, March 2018, 11; HSA, “Submission,” 4–5; Retail Action Network, “Submission to the Labour Relations Code Review Panel,” Victoria, 2018, 4; Unifor, “Make It Fair,” 6.

195. Mitchell & Murray, *Final Report*, 360–361; United Food and Commercial Workers, “Submission to the Labour Relations Code Review Panel,” by Ivan Limpright, New Westminster, 20 March 2018, 8–9.

196. MWC, “Submission,” 7–13.

197. Vancouver Committee for Domestic Workers’ and Caregivers’ Rights, “Submission to BC Labour Relations Code Review Advisors,” Vancouver, 19 March 2018, 2–6.

198. BC Fed, “Submission to the *Labour Relations Code* Review Committee,” Vancouver, 20 March 2018. See also, for example, Vancouver and District Labour Council, “Labour



Fed had chosen to include only proposals that were unanimously supported by its affiliates. On other issues, the BC Fed asked affiliates to make their own submissions.<sup>199</sup> Also of note was that BBB was “raised more consistently and vocally by employers than unions” in the consultation process, including in a joint submission by thirteen private-sector employer organizations and employers, a group regarded as the dominant employer voice in this process.<sup>200</sup> Employer submissions characterized BBB as a threat to businesses’ autonomy and self-determination that would disregard the needs and circumstances of individual businesses and deprive newly certified employers of control over terms and conditions of their own business, potentially imposing unaffordable terms and conditions on these employers and violating the BC Code principle that parties have a direct voice in terms and conditions of employment.<sup>201</sup> Several employers in the technology industry emphasized the heterogeneity of enterprises in that sector and argued that common interests among employers are a precondition to non-disruptive BBB structures.<sup>202</sup> Other employer submissions characterized statutory BBB as “a step back in time,” emphasizing the trend toward decentralized bargaining in other English-speaking jurisdictions and arguing that although BBB may be appropriate in some industries where there exists an established history of collective bargaining, it is not appropriate for industries lacking this history.<sup>203</sup> In particular, franchise-sector representatives contended that sectoral representation and bargaining

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Relations Code Review Submission,” by Stephen von Sychowski, Vancouver, 19 March 2018; Canadian Association of Labour Lawyers, submission to the Labour Relations Code Review Panel, by Peter Barnacle, Patricia Deol & Natasha Morley, Ottawa, 20 March 2018; usw Local 1-1937, submission to Labour Relations Code Review Committee, by Brian Butler, Duncan, BC, 16 March 2018; usw Local 1-405 (Kootenays), “Presentation to Labour Code Review Panel,” 6 April 2018. Notably, Unifor did not offer the detailed submissions it had provided in the Ontario CWR process. Nor did it participate in the BC Fed coordinated process, which occurred after its withdrawal from the CLC in January 2018. Unifor, “Make It Fair.”

199. Zaecker interview.

200. Union representative #1, interview by the author, 22 May 2018; BC Chamber of Commerce, BC Hotel Association, Canadian Federation of Independent Businesses, Canadian Franchise Association, Canadian Home Builders’ Association, Canadian Manufacturers & Exporters, Greater Vancouver Board of Trade, Independent Contractors and Businesses Association, New Car Dealers Association of BC, Restaurants Canada, Retail Council of Canada, Tourism Industries Association of BC & Urban Development Institute, “Submissions on the BC Labour Relations Code Review,” Vancouver, 20 March 2018, 6–7.

201. BC Chamber of Commerce et al., “Submissions,” 6–7; Business Council of British Columbia (BCBC), “Submission to the Labour Relations Code Review Panel,” Vancouver, March 2018, 6–7.

202. DigiBC, “Submission to the Labour Relations Code Review Panel,” Vancouver, 20 March 2018, 7–8.

203. BC Chamber of Commerce et al., “Submissions,” 7; BCBC, “Submission,” 7; DigiBC, “Submission,” 7.

would threaten the viability of the franchise model and, in turn, investment in the province.<sup>204</sup>

The minority status of the NDP government and significant differences in priorities and perspectives between the NDP and Greens provide a complicated context for labour law reform in British Columbia. The Green Party leader at the time of the review, Andrew Weaver, adamantly opposed a key NDP labour law reform goal – reinstitution of the card-based certification process – and was quoted as saying, “I will never support legislation that will eliminate the secret ballot. ... It’s simply not going to happen.”<sup>205</sup> More recently Weaver stated that the BC Green Party will consider proposed BC Code amendments on their merits.<sup>206</sup> The confidence and supply agreement offers little assurance of Green support for NDP labour law reform efforts. It explicitly provides that the NDP will consult with the Green Party and that “BC Green support for policy and legislation which does not relate to confidence or supply is not subject to this agreement and will be decided on an issue by issue basis.”<sup>207</sup>

The Review Panel’s final report, submitted to the minister on 31 August 2018, concluded that it had not received sufficient information or analysis to make specific recommendations about either sectoral certification or bargaining. It did, however, suggest that sectoral certification be studied by a single-issue commission and recommended that sectoral, multi-employer bargaining be considered by an industrial inquiry commission or industry council pursuant to section 80 of the BC Code.<sup>208</sup> The subsequent amendments to the BC Code, passed in May 2019, did not address BBB but provided for stronger successorship rights upon contract retendering in specified sectors.<sup>209</sup>

## Conclusion

OVER THE LAST THREE DECADES, broader-based and sectoral bargaining proposals have arisen in numerous private-sector collective-bargaining law reform episodes across the country. In each case, BBB failed to garner widespread support and frequently met with opposition from the labour movement.

204. Fleming, Banister & Dong, *Recommendations for Amendments*, 17.

205. Rob Shaw, “B.C. Greens Kill NDP’s Proposed Change on Unionized Secret Ballots,” *Vancouver Sun*, 21 June 2017, <https://vancouversun.com/news/politics/b-c-greens-kill-ndps-proposed-change-to-unionized-secret-ballots>.

206. Ian Bailey, “B.C. Panel Holds Public Hearing amid Review of Province’s Labour Code,” *Globe and Mail*, 20 March 2018, <https://www.theglobeandmail.com/canada/british-columbia/article-bc-panel-holds-public-hearing-amid-review-of-provinces-labour-code/>.

207. British Columbia, “2017 Confidence and Supply Agreement,” sec. 1.

208. Fleming, Banister & Dong, *Recommendations for Amendments*, 17, 26, Recommendation 19.

209. Bill 30, Labour Relations Code Amendment Act, 2019, 4th Sess., 41st Parl., British Columbia, 2019 (SBC, c 28).

Proposals were also met with varying degrees of employer opposition and government disinterest. In every instance, subsequent legislative amendments failed to incorporate BBB proposals. Given that the structural challenges of enterprise-based representation and bargaining – intensified by the continuing shift toward smaller workplaces and non-standard work arrangements, growing inequality, and more effective employer resistance to unions – are among the key difficulties faced by unions and workers, it is surprising that the labour movement has not embraced and prioritized BBB reforms. This is particularly perplexing in the face of long-standing evidence that centralized and coordinated bargaining structures are associated with better workplace and labour-market outcomes for workers and unions.

The present study sought, through interviews of union representatives, researchers, and policy advisers involved in labour law reform episodes within the period under study, to reach a better understanding of the labour movement's lack of strong engagement with this issue, given that unions and their members appeared to have the most to gain from BBB reforms. Earlier assessments of labour law reform in Ontario and British Columbia in the 1990s explain these failures as arising from strong employer resistance to the proposals; in terms of widespread lack of knowledge or understanding of the concept (especially among the labour movement); or by characterizing BBB as a concept too foreign to be introduced to the Wagner model of collective bargaining.<sup>210</sup> However, these explanations do not account for the continued failure of BBB proposals in recent decades, and the present study offers evidence for a different understanding of this recurring phenomenon. First, while vehement employer opposition may have contributed to the failure of BBB proposals in the 1990s, strong employer opposition to BBB was not a prominent feature of recent collective-bargaining law reform experiences. Therefore, additional explanations must be considered. Second, earlier studies suggest that the labour movement's lack of support for, and even opposition to, BBB was rooted in a lack of understanding of the notion. However, recent labour law reform episodes demonstrate that, in contrast to the 1990s, there is now substantial awareness and understanding of BBB within the labour movement and that unions have been willing to inform themselves about the concept, including discussing and actively seeking to understand other unions' differing views.<sup>211</sup> Therefore, lack of understanding of the growing crisis in unionization is not a satisfactory explanation. While there was limited recognition within the labour movement in the 1990s of the necessity for new modes of organizing and bargaining, including broader-based approaches, there can be no doubt that today's labour movement is aware of the critical difficulties facing unions.

210. See comprehensive case studies in Eaton, "Labour Law Reform"; MacDonald, "Sectoral Certification"; MacDonald, "New Deal Model"; labour researcher interview; Georgetti interview.

211. Union representative #2, interviewed by author, 24 May 2018.

In contrast with earlier research, the present study offers a different explanation for the lack of support for, or the opposition to, BBB by some unions. It finds that union resistance arises from three sources: first, concern that BBB threatens some unions' ability to preserve existing representation rights; second, resistance by some unions to the prospect of being required to participate in a council of unions in which their own bargaining power may be diluted; and third, anticipation of jurisdictional conflicts among unions resulting from new, broader-based representation and bargaining structures. Additionally, it became evident in the course of this study that the consensus approach taken by peak labour organizations to decide which labour law reform issues to advocate for explains the silence around and lack of advocacy for BBB by many labour federations. These sources of resistance, which explain unions' lack of support for BBB in both early and contemporary labour law reform efforts, may be the most significant barriers to adoption of BBB in the future.

Finally, past studies appear to attribute government's disinterest in BBB reforms to lack of knowledge of the concept. This is difficult to reconcile with the active exploration of the issue by some of those tasked with making labour law reform recommendations, such as the urgent invitations by members of the BC subcommittee in 1992 and the Ontario CWR in 2015 to the labour relations community to provide BBB submissions and input – invitations that met with limited response. A more compelling explanation is that governments have been unwilling to undertake novel reform that is likely to meet with employer opposition and that has little union support. Given the highly politicized nature of labour law reform, and thus the political cost of innovative and untried changes, it is not surprising that governments have opted to forgo such a contentious route, despite its potential socioeconomic benefits, particularly for workers.

The future will likely continue to be characterized by ongoing, if not accelerating, stagnation or decline in union density, growth of smaller workplaces, waning of traditional employment relationships, and increasing inequality. Looking ahead, the potentially stabilizing effects of BBB may be of more importance to workers than ever, while it may also appear to be a greater threat to the survival of vulnerable unions. As a result, the labour movement and its peak organizations may have to directly confront the dilemma of whether to try to protect certain individual unions' existing rights or to try to protect the broader labour movement, and workers, through pursuing BBB.

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