

## **UNION ORGANIZING AND B.C. LABOUR LAW: AN UPDATE**

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### **INTRODUCTION**

Certain of the amendments to the *Labour Relations Code* (the “Code”) introduced by the current Liberal government and the interpretation of the amended Code by the Labour Relations Board (the “Board”) have had a profound impact on the ability of trade unions to organize workers in British Columbia in recent years.

Labour law has a significant impact upon the ability of unions to organize workers. There are, of course, other economic, political and social forces which have an impact upon the success of union organizing. In particular, many observers have noted the decline of our resource based economy and a shift to service sector employment and a concomitant increase in the number of part time, temporary and other precariously employed workers assigned to small workplaces as contributing to the decline in union density. Some have argued that Code itself and Board jurisprudence assume that the economy is organized around large, industrial type enterprises and are therefore not sensitive to the collective bargaining aspirations of workers who are tenuously employed in these small workplaces. However, in our view, there is little doubt that labour law, in the narrower sense (that is, the provisions of the Code as amended from time to time within the existing framework, and the Board’s interpretation of them) plays a significant role and can either hinder or foster effective union organizing.

Both the recent Code amendments and the Board’s administration of the amended Code have hindered the effort made by trade unions to organize workers in British Columbia. Indeed, certain of the amendments and the Board’s approach to them are not consistent with the fundamental right of employees to associate together in unions, which is the very principle or premise upon which modern labour relations legislation is based. Section 4(1) of the Code guarantees that every employee is free to be a member of a trade union and to participate in its lawful activities. An approach which is hostile to organizing efforts is inconsistent with the fundamental purpose or “essential ambition” of the Code, which in the end, is to foster and further the right to organize; *Dunmore v. Ontario(A.-G.)*(2001), 207 D.L.R. (4<sup>th</sup>) 193 (S.C.C.).

In British Columbia, the major developments in labour law in recent years have for the most part served to hinder and thwart effective union organizing. These developments, and their impact on union organizing, were very ably explored by my partner, Patrick Dickie, in a heretofore unpublished paper entitled “The Crisis in Union Organizing under the B.C. Liberals”. This paper can be read [here](#).

### **THE DECLINE IN ORGANIZING**

Is union organizing in decline in British Columbia?

In the appended paper, it is demonstrated that certain of the recent amendments to the Code and the Board's approach to them have significantly contributed to a sharp decline in union organizing in British Columbia. By any measure – either the success rate of certification applications, or the number of certification applications granted, or the number of previously unorganized employees covered by certification applications which are granted – union organizing is in decline in B.C.

Indeed, in an analysis based upon statistics which are maintained and published by the Board, it is demonstrated that the average number of unorganized employees certified in any of the past three years (i.e. since 2001, when the first of the recent Code amendments were introduced) is considerably lower than in any previous year. It is also shown that although the number of union members in British Columbia steadily increased in the period 1976 to 2004 (from 384,600 workers to 561,600), union density has actually decreased in that same period (from 41.2% of the workforce to 33.6%). Thus, if present trends continue, the labour movement may experience a decrease in the number union members in absolute terms.

## **LEGAL DEVELOPMENTS**

In the Appendix, the following developments in labour law are identified as those which have thwarted and hindered union organizing activity:

1. The amendments the Liberals made to the *Labour Relations Code* in 2001 that reintroduced mandatory representation votes.
2. The further amendments the Liberals made to the unfair labour practice provisions of the *Labour Relations Code* in 2002 (and the subsequent interpretation of those amendments by the Labour Relations Board).
3. The Labour Relations Board's failure to provide effective remedies in the face of an increasing incidence of unfair labour practices.
4. The administrative procedures of the Labour Relations Board in the processing of certification applications.

This paper will focus on the second factor (unfair labour practices and employer speech) and in particular, will address the Board's decisions in *RMH*. In addition, this paper will address the third factor in light of a recent decision granting remedial certification. Finally, this paper will also briefly consider the question of bargaining unit appropriateness as it relates to worker access to collective bargaining, that is, whether the Board's approach to bargaining unit appropriateness serves to foster access to collective bargaining or hinders access. In this way, it is hoped that this paper will in a modest way serve to supplement and update the analysis found in the Appendix.

Before turning to those issues, a brief summary of the observations made in the Appendix concerning mandatory representation votes and Board administrative procedures is in order.

### **Mandatory Representation Votes**

On August 16, 2001, the Liberal government amended the Code to provide for mandatory representation votes in certification cases. Card based certification, where a trade union achieves certification on the basis of membership cards signed by 55% of employees, was eliminated.

This legal development has had a negative impact on union organizing.

British Columbia has altered between card based certification and mandatory representation votes several times over the years. As is illustrated in the Appendix, the number of workers organized into unions invariably declines when card based certification is eliminated in favour of mandatory representation votes. Card based certification simply does not allow for employer interference or communication in the period between the application and the vote.

But the seriousness of the decline in organizing since this most recent return to mandatory representation votes is striking. During the three full years of the present mandatory vote regime, from 2002 to 2004, the number of unorganized employees certified has declined to an average of just 1,739 per year. Disturbingly, this is considerably less than half of what it was from 1985 to 1992 when the Social Credit government maintained a mandatory representation vote system. In fact, the number of unorganized employees certified in any of the past three years is considerably lower than in *any* previous year.

Similarly, if one looks to either the annual number of certifications granted or the success rate of certification applications, the numbers are significantly lower under today's mandatory representation vote system than at any time during the last 30 years, including during the Social Credit mandatory vote period from 1985 to 1992.

Thus, although mandatory representation votes undoubtedly contribute to the current decline in organizing, other factors are obviously aggravating the situation and these too must be examined.

### **Board Administrative Procedures**

As is discussed more thoroughly in the Appendix, the administrative procedures of the Board regarding certification applications play an important role in successfully and expeditiously obtaining a certification, and are critical to a fair and balanced certification process.

Certain administrative procedures of the Board are very likely contributing to the present decline in union organizing.

- The time it takes to decide certification applications. The average length of time it takes for the Board to process a certification application has approximately doubled in recent years.
- The time it takes to hold representation votes. The Code requires that a representation vote be conducted “within 10 days” of an application for certification. However, in practice representation votes are almost always held at or very near the end of that 10 day period.
- The abandonment of payroll inspections. Fewer Industrial Relations Officers mean that there is no time for a payroll inspection to determine the number of employees in a proposed bargaining unit. Instead, the number of employees in the bargaining unit is determined based solely on the employer’s say so. This gives rise to the potential for abuse and manipulation. In addition, there is a related problem that the Board generally refuses to disclose the employee list portion of the IRO report to unions that do not have the required 45% support (as calculated based on the employer’s untested assertions as to who should be on that list) despite a statutory obligation to disclose the reports it receives to the parties. This severely restricts the ability of unions to effectively challenge possible padding of the employee list, which again may contribute to certification applications being improperly dismissed for failing to achieve the required 45% level of membership support.
- We might add here (albeit anecdotally) that the Board has shown a somewhat greater propensity to resort to mail ballots, not because circumstances call for a mail ballot, but because no IRO is available to conduct the vote within the ten day time limit.

## **Unfair Labour Practices and Employer Speech**

### *Code Amendments*

The Legislature amended the unfair labour practice provisions of the *Code* in 2002. The most notable amendments were to section 8, which is known colloquially as the “employer speech” provision, and to section 6(1), which prohibits interference with the formation, selection or administration of a trade union.

Previously, section 8 provided as follows:

Nothing in this Code deprives a person of the freedom to communicate to an employee a statement of fact or opinion reasonably held with respect to the employer's business.

In 2002, section 8 was amended to read as follows:

Subject to the regulations, a person has the freedom to express his or her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.

A companion amendment was made to section 6(1) of the Code so that it now makes express reference to section 8:

6(1) Except as otherwise provided in Section 8, an employer or a person acting on behalf of an employer shall not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it.

It is generally accepted that the amendment to sections 8 and 6(1) were intended to give employers more latitude to communicate with employees about unions and collective bargaining. But the Board initially took a very broad view indeed of employer speech, most notably in the decision in *RMH Teleservices International Inc.*, BCLRB No. B345/2003, 100 C.L.R.B.R. (2d) 95. The amendments to section 8 do not compel the result or conclusions drawn in the *RMH* case.

#### *The Original Decision in RMH*

RMH was a telephone “call centre” located in Surrey. In response to organizing activity by the BCGEU, RMH embarked upon what might be described as a full fledged political style campaign against unionization.

RMH brought in managers from abroad to circulate throughout the call centre to answer employee enquiries and to give them gifts bearing anti-union messages, including Frisbees and sand pails filled with popcorn.

In addition, RMH set up five projectors in the call centre to present a slide show which included messages about the RMH RRSP matching program, complete with a depiction of a “money tree” and RMH financial statements. In addition, anti-union messages were continuously projected onto the wall of the call centre.

The anti-union messages communicated by means of the gifts and the slide show suggested that a union does not ensure job security, because only the employees and their productivity ensure job security, that unions do not understand the dynamic, client-centered business of RMH, and would therefore impair productivity, that an individual means nothing to the union and will simply get lost in the crowd, and that the union cannot make any guarantees or promises because RMH is in a position to refuse to accede to any union demands.

In addition, some of the messages urged employees to ask certain questions of the union, such as whether or not the union can secure a wage increase large enough to counteract the cost of union dues, or guarantee that employees will not lose the benefits they already have, or ensure job security in light of contracting out in the hospital jobs.

Finally, RMH held meetings with the employees to discuss the union's organizing campaign, during which RMH referred repeatedly to the amount of money it was losing.

In the now rather notorious *RMH Teleservices International Inc.*, BCLRB No. B345/2003, 100 CLRBR (2d) 95, the Board found that essentially all of these actions and statements were permissible under the Code.

The Board concluded that the meetings were not captive audience meetings, since employees were free to go, and attendance was not being taken.

The Board said that because gift giving was not the expression of a "view", this activity is not protected by section 8. But this activity was not "interference" because of the gifts were of "marginal value" and because the employees were free to refuse the gifts. The presence of the extra managers who distributed the gifts and answered questions was acceptable because the employer called some evidence that these managers were performing other tasks besides answering questions and bestowing gifts.

Most surprising of all was the finding that the slide shows were permissible under the Code. While the Board conceded that the method of expressing a view could be coercive or intimidating regardless of the content or substance of the view, it held that employees of RMH were free to look away from the screens and ignore the message. The Board compared the slide show to a large poster in the workplace and noted that there was no audio accompanying the slide shows.

Nowadays, where developments in technology allow for ever faster and more vivid means of communication, and where employers are apparently willing to deploy such technology in response to union organizing campaigns, the Board's nascent recognition that the "medium is the message" is an important development. As noted above, the original panel did acknowledge that a message that is otherwise not coercive might become coercive if it is communicated in a certain way. The Board has therefore recognized that the means of communicating must be examined, and again, in this age of ever more elaborate and vivid ways of communicating, this recognition that "the medium is the message" is important.

But the Board also held as follows with respect to the slide shows:

The projections can be fairly characterized as part of a campaign (an organized course of action) designed by the Employer to persuade employees not to join the Union. However, this does not necessarily mean that the messages projected or their method of their delivery is coercive or intimidating. The fact the Employer expressed its views as part of a campaign against the Union is a relevant feature of the context in which those views are assessed. However, in the absence of coercion or intimidation, views expressed as part of a campaign are protected by Section 8 and do not constitute interference for the purposes of Section 6(1).(para. 104).

### *The Reconsideration Decision in RMH*

But more recently, in the latest (and rather welcome) development on the subject of employer speech, the Board has indicated a willingness to limit the kind of activities that the original panel in *RMH* was prepared to accept.

In *RMH Teleservices Inc.*, BCLRB No. B188/2005 (Leave for Reconsideration of B345/2003), 114 CLRBR (2d) 128, the union argued that a full blown political style campaign of the type waged by RMH was not permitted under the Code and that the slide show and the gifts bearing anti-union messages amounted to “forced listening” and were not permissible or protected under section 8.

On reconsideration, the Board found that while an employer may communicate with employees about unionization, it may not do so in a manner that is coercive and intimidating. For there to be coercion and intimidation, there must be “compulsion for the purpose of influencing conduct”; see paragraph 46. On that basis, the reconsideration panel concluded that the slide shows amounted to “...improper pressure on employees and are thus are [sic] contrary to the restrictions on coercion and intimidation in both sections 8 and 9 of the Code”; paragraph 66. Similarly, the reconsideration panel concluded that although the gifts were of marginal value, the employer was “improperly intrusive and persistent” in its attempt to express a view in this way; paragraph 68.

In discussing the slide shows, the reconsideration panel (significantly) observed as follows:

The slide shows were so prominent, persistent and impossible to miss that employees, while at work, would inevitably have been forced to view them or forced to consciously turn away from them. *This is the type of communication where otherwise permissible views become coercive or intimidating* (emphasis added)(paragraph 66)

Again, the Board recognizes that the “medium is the message” and this is an important finding in our technology obsessed society.

On the other hand, the Board unfortunately failed to sufficiently curtail political campaign trail style anti-union campaigns by employers:

...the test under the legislation is not whether the employer was engaging in an anti-union “campaign”...Accordingly, if the campaign takes place in written form and the views expressed are not in themselves coercive or intimidating, the Board has in effect found that the fact that they could be characterized as an anti-union campaign by the employer would not be sufficient to render them coercive or intimidating...(paragraph 54)

With respect, the problem with this specific finding is that it does not take account of the fact that the way a message is conveyed (in this instance, in the context of a political style campaign) might make it coercive and intimidating, even though the substance of the

message might be otherwise permissible and is thus inconsistent with the panel's other findings. The reconsideration panel failed to grasp that a political style campaign is one, large vehicle or medium for delivering a message and that even messages which might otherwise be permissible could become coercive if delivered in that way.

Thus, the reconsideration decision in *RMH* addresses some of the most disturbing aspects of the original decision, but does not address employer campaigning sufficiently to give comfort to those concerned about the decline in organizing.

## **Remedies**

In the Appendix, it is argued that a lack of effective remedies for unfair labour practices is also a factor that is likely contributing to the present decline in certifications and that this is most apparent in the Board's ongoing reluctance to utilize remedial certification as a remedy.

In *Beechwood Construction Ltd.*, [1977] 2 Can LRBR 218 the Board expressed concern that the remedies fashioned by the Board were apparently have little impact on the incidence of unfair labour practices. Consequently, in *Beechwood*, the Board signaled that it would resort to remedial certification more readily to deprive employers of the very thing that their unlawful conduct sought to achieve – to remain non-union.

But as observed by the Board yet again, this time in 1996, unfair labour practices were not in decline and remedial certification would therefore be used in a more "liberal" way (para. 328); *Cardinal Transportation B.C. Inc.*, BCLRB No. B344/96 (Leave for Reconsideration of B463/94 and B232/94), 34 CLRBR (2d) 1. But the panel in *Cardinal Transportation* also added the following qualification:

...we do not see the effect of this policy resulting in an immediate and significant increase in the issuance of remedial certifications. The Board can monitor the labour relations effect of the potentially increased use of this remedy both in terms of a particular collective bargaining relationship (its success or failure), and in regard to its general deterrence (the rate of unfair labour practices generally and the kind of unfair labour practices specifically – discharge, discipline, threats of closure, etc.) (paragraph 329)

This amounts to a plea to the business community to "self regulate" in light of "potential" remedial action by the Board. This sort of plea is no doubt effective for conscientious employers who are inclined to adhere to the Code in any event, but would do little to dissuade those who are prepared to contravene the Code to defeat a certification drive.

And indeed, this attempt at urging effective self regulation on the employer community has proved spectacularly unsuccessful. As is demonstrated in the Appendix, the annual number of unfair labour practice complaints and orders per certification application has increased in recent years. Most unfair labour practices are committed during organizing campaigns and most often, complaints are filed in close proximity in time to a

certification application. And yet, the Board continues to deal with remedial certifications very gingerly indeed.

Nonetheless, it must be pointed out that the remedy has life in it yet. The Board issued a remedial certification in *Trevor J. Lowe Holdings Ltd.*, BCLRB No. B212/2005, 115 CLRBR (2d) 113. The employer committed a number of unfair labour practices when it disciplined union organizers, implemented a profit sharing program and increased employees wages to defeat the union. The analysis resulting in the remedy was based upon *Cardinal Transportation*. But given the decline in organizing and the increase in unfair labour practices, it is time to abandon the *Cardinal* policy of trusting in employer self regulation.

*Trevor J. Lowe Holdings* is the subject of an outstanding application for reconsideration.

### **Bargaining Unit Appropriateness**

#### *Vancouver Film School*

Since it was published in 1993, the Board's decision in *Island Medical Laboratories*, BCLRB No. B308/93 (Leave for Reconsideration of IRC No. C217/92 and B49/93), 19 CLRBR (2d) 161 has been the chief point of reference for the labour relations community on the topic of bargaining unit appropriateness. *IML* seeks to encourage and foster both access to collective bargaining and industrial stability.

As was recently said by a reconsideration panel in *Vancouver Film School*, BCLRB No. B291/2003 (Leave for Reconsideration of B387/2002), 99 CLRBR (2d) 61:

*IML* itself, however, does not contemplate a singular focus. Rather, it regards both principles – access to collective bargaining and industrial stability – as fundamental and emphasizes that both are always present in any determination of appropriateness. This was the first point the *IML* panel made in its summary of the law and policy set out in the decision: p. 192 CLRBR. Thus, while the principles are to be given different weight depending on whether the application is for a first or subsequent bargaining unit, both still remain fundamental to the analysis (paragraph 15)

It is quite clear that employee access to collective bargaining is very much a function of the Board's law and policy analysis concerning appropriateness. Does the appropriateness analysis adopted by the Board hinder access or foster access?

According to the reconsideration panel in *Vancouver Film School*, the Board's approach has on some occasions hindered access to a unwarranted degree and has on other occasions provided access to a degree which gives industrial stability short shrift; see paragraph 14. And presumably, the Board has in many cases weighed and balanced these factors as contemplated in *IML*.

Fair enough. But do recent decisions suggest that access to collective bargaining will be considered to the degree contemplated by *IML*?

On the one hand, the *Film School* case itself purports to affirm *IML*. The panel rejected the employer's argument that the *IML* "building blocks" approach should be abandoned on the basis that it results in "initial bargaining structures" which create industrial instability. This bodes well for an appropriateness analysis which accounts for access to collective bargaining at least to the degree contemplated by *IML*. And given the reconsideration panel's affirmation of *IML*, the decision should most certainly not be read as signalling a return to the discredited approach in *Whistler Mtn. Ski Corp.*, IRC No. C83/90. In other words, an applicant union need not show a "unique" community of interest within a proposed unit to secure an initial less than all employee certification. An initial unit may indeed be a scaled down version of an all employee unit, as *IML* tells us on page 171. The variation in skills and interests may be as great within a proposed less-than-all-employee unit as the variation is outside of the proposed unit; see *IML*, page 174. An applicant union must simply demonstrate a community of interest within a proposed unit sufficient distinct to allow for a rational, defensible boundary around the proposed unit. This allows for employee access to bargaining and successful organizing in keeping with *IML*.

On the other hand, the *Film School* panel also intimates that the Board will more carefully scrutinize applications to ensure the *IML* standard is met in obtaining an initial certification for a first "building block"; see paragraph 22. And even more troubling is the faint echo of *Whistler* in the way the reconsideration panel addresses the first *IML* factor at paragraph 29 of the decision:

The original decision thus found the skills, interests, duties and working conditions of the employees in the alternative unit were similar to both the other employees in the proposed unit and to the employees outside the unit. It concluded that this "both discourages and encourages" a finding that the employees in the unit had a "distinct community of interest": *ibid*. The original decision was correct that the issue was whether the employees had a distinct community of interest, but was incorrect in assessing the legal ramifications of its factual findings in that regard. Given that the employees in the proposed unit share similar skills, etc., with those outside it, that weighs against the conclusion that they have a distinct community of interest, even though they share similar skills, etc., with each other. Therefore, this factor should not have been neutral; it should have weighed against a finding of appropriateness.

But in relation to applications for initial, less-than-all-employee units, the *Film School* panel also addresses the "traditionally difficult to organize" ("TDO") concept and the Board's willingness to relax the community of interest analysis *only* in such circumstances. The Board stresses that it will not accept a TDO argument in the absence of compelling evidence; see paragraphs 17 and 18.

*Vancouver Film School* affirms *IML* and the idea that access to collective bargaining is a key component in the appropriateness analysis. But to the extent that it signals a tougher approach to appropriateness in relation to initial applications for certification, and in that vein seems to lapse into something of the discredited *Whistler* analysis, and moreover, takes a hard line on the TDO concept, it is not encouraging for access to collective bargaining and effective organizing.

And that brings us to the Board's decisions in *Wal-Mart*.

### *Wal-Mart*

In *Wal-Mart Canada Corp.*, BCLRB No. B190/2005, 115 CLRBR (2d) 63, the Board found that a bargaining unit including both the Tire Lube Express employees and automotive department employees ("Division 6") at some seven stores in B.C. was appropriate for collective bargaining. The Board found that there was a minimal amount of functional integration between the Division 6 group and another division but that this was not sufficient to defeat the application. Also, the panel found that the collective bargaining would not be undermined even though the proposed unit cut across the sales associate and department manager classification lines *in each store* i.e. sales associates and department managers were found inside and outside the proposed unit. The panel said that the general admonition against certifying a unit which cuts across a classification line at a single site should not be applied without examining the facts; see paragraph 186. Out of an abundance of caution, the panel went on to conclude that in any event, the department store sector (as opposed to the broader retail sector generally), in which Wal-Mart operates, is TDO and noted that the principle that the Board will not cut across a classification line at a single site is significantly relaxed in the TDO context. The Board granted the application for the seven stores and ordered the representation vote to be counted<sup>1</sup>.

In *Wal-Mart Canada Corp.*, BCLRB No. B301/2005 (Leave for Reconsideration of B190/2005 and Certification dated September 7, 2005) a reconsideration panel concluded that the original panel gave rather short shrift to the general principle that a proposed bargaining unit which cuts across a classification line(s) at a single site is not appropriate. But the reconsideration panel notes that the principle is "not an absolute rule" (paragraph 49) and says that:

...While the original panel recognized the restriction against cutting across classification lines in a single integrated site would not generally occur, it concludes the facts were appropriate to find an exception to the general proposition (paragraph 53)

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<sup>1</sup> Following the publication of B190/2005, the representation vote was conducted, and only Division 6 employees at the Cranbrook store voted for certification. A certification therefore issued for Division 6 employees at Wal-Mart in Cranbrook on September 7, 2005).

The reconsideration panel nonetheless remitted this issue back to the original panel, a decision which is hard to understand in light of the statements set out above. The decision is even more inexplicable because the reconsideration panel makes no effort to address the original panel's conclusion in the alternative that Wal-Mart operates in the TDO department store sector and the general rule against cutting across a classification line(s) is therefore significantly relaxed.

But in the end, the original panel again reviewed the circumstances in light of the general (but not absolute rule) against cutting across classification lines at a single site and reached the same conclusion as in B190/2005; see *Wal-Mart Canada Corp.*, BCLRB No. B5/2006 (published January 10, 2006).

But the decision of the reconsideration panel gives rise to concerns about appropriateness and access to collective bargaining. First, based on the approach of the reconsideration panel, it appears that an original finding that a proposed unit is appropriate is shockingly fragile on reconsideration. Second, the reconsideration panel opines that it may be time to test the continuing relevance of the TDO doctrine in the retail sector, even though the original panel concluded that the department store sector, and not retail generally, was at issue.

The additional reasons provided by Chair Mullin in the reconsideration decision amount to a much wider ranging critique of the original decision and may foreshadow other soon to come elements in the Board's appropriateness analysis which will, if given full rein, certainly restrict access to collective bargaining. For example, the Chair expresses concern that there is no apparent "geographic rationale" as to why certain stores were included in the proposed unit, and others were not; paragraph 67. Does this mean if a trade union initially organizes employees in South Surrey, it cannot sign up workers in Fort St. John who are clamouring for representation because the union has not yet worked its way up through the province from south to north in some "rational" way? Must organizing be complete in one region of the province before it continues in others? Also, the Chair alludes to the rights of employees outside the proposed unit; paragraph 68. Do such employees have a voice in whether or not *other* workers want to join a union? If so, where does that end?

These are as yet unanswered questions, but they give rise to concern that the Board's appropriateness analysis may soon be altered (distorted?) to include elements which serve to further restrict access to collective bargaining.

## **CONCLUSION**

Developments in labour law have had a profound impact on organizing in recent years. Some of the developments have been welcome from the point of view of union counsel, such as the current Board's affirmation that access to bargaining is always a key component in the Board's appropriateness analysis, as is explained in *IML*. Also of importance is recognition in *RMH* that "the medium is the message", a conclusion which is of particular importance in an age where technology constantly provides ever more sophisticated and vivid ways of conveying ideas and messages. But unfortunately, many

recent developments in the law have served to hinder union organizing to a significant degree in these last few years in a manner that is at odds with the core assumption of modern labour law: that collective bargaining is a socially desirable institution.