

Protecting **successorship**

Successorship laws are meant to provide job security and ensure that employers cannot undermine the efforts of workers to organize and bargain collectively simply by selling off all or parts of their business.

The successorship provision of the BC *Labour Code* — Section 35 — stipulates that if a business or part of it is sold, leased, or transferred the new owner is bound by any collective agreement in force at that business on the date of sale.

Wages, benefits and rights contained within the collective agreement apply to the new employer and bind them to the same extent as if they had signed the original agreement with the employees and their union. They are considered the “successor” employer.

Contracting out and contract flipping

Gaps in BC’s current successorship legislation, combined with inconsistent application of the laws, have allowed employers to evade collective bargaining relationships and terminate employees in an increasingly frequent number of circumstances.

One of the most glaring weaknesses is that current successorship legislation does not apply to contracting out or contract flipping. Employers have exploited this weakness by contracting out functions that are integral to their operations to third parties or subcontractors, often in an effort to lower wages and benefits, block workplace improvements, and avoid unionization.

LEGISLATIVE GAPS

have allowed employers to evade collective bargaining relationships and terminate employees.



BC’s Labour Code should be broadened to address the problem of subverting a collective agreement through contract flipping.



In the current environment, owners can quite easily sever ties with their subcontractor who in turn layoffs its staff without repercussion to the larger company.

Contracting out and contract flipping are particularly prevalent in construction, health care, food services, and building services.

IN FOCUS: **Impact on health care**



Contracting out and subsequent contract flipping in the health care sector have become more frequent since the passage of *Bill 29 – Health and Social Services Delivery Improvement Act (2002)* and *Bill 94 Health Sector Partnerships Agreement Act (2003)*. These Bills exempted the health care sector from successorship legislation.

Since 2002, through a series of legislative and regulatory changes, the provincial government voided successorship rights and contracting-out provisions throughout the health care sector in BC – impacting both acute care and residential care services.

Using the example of residential care, the gaps in legislation enable publicly funded operators to contract out both support services including housekeeping, dietary, laundry, and maintenance services as well as direct care services provided by residential care aides, nurses, rehab assistants and activity aides.

Impact on seniors

Contracting out results in disruptions in continuity of care for seniors and is often followed by lower staffing levels and other quality concerns.

A number of studies have shown that contracting out and high staff turnover have negative effects on the quality of care and residents' health. Seniors subject to such instability may see increased incidence of pressure ulcers, increased dehydration, increased rates of hospitalization, and the decreased ability to engage in the activities of daily living (dressing, grooming, etc).¹

Despite these outcomes, for-profit and some non-profit facilities in BC continue to exploit weaknesses in the legislation to abruptly terminate contracts, fire staff, and engage new subcontractors with a newly hired workforce.

¹ See, for example J.M Murphy, 2006, *Residential care quality: A review of the literature on nurse and personal care staffing and quality of care*. BC: Nursing Directorate British Columbia Ministry of Health, health.gov.bc.ca/library/publications/year/2006/residential-care-quality-a-review-of-the-literature-on-nurse-and-personal-care-staffing-and-quality-of-care.pdf

PROFILE: Inglewood Care Facility

On May 31, 2015, one year into the negotiation of a first collective agreement, 230 workers at the Inglewood Care Facility in West Vancouver will be laid off.

Shockingly, this will be the sixth change in subcontractors at Inglewood since 2003, and yet another serious disruption to the care of the 235 seniors in the facility.



A residential care facility is not only a business, but also a home to the seniors who reside there. Often, staff who work in the facility are like family, and care aides and nurses are the primary care providers for seniors living there.

Continuity and quality of those relationships is particularly important to the residents' health and quality of life.

Examples of multiple contract flips in BC seniors care



Windermere Care Centre, Vancouver: three times since 2004



Dufferin Care Centre, Coquitlam: three times since 2003



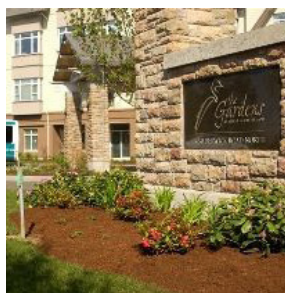
Spring Valley Care Home, Kelowna: twice since 2003



Beacon Hill Villa, Victoria: four times since 2004



Nanaimo Seniors Village: three times since 2004



The Gardens, Qualicum Beach: three times since 2005

CONTRACTING OUT

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“Over time, long-term staff acquire specialized knowledge of needs, so the simultaneous replacement of many employees can make it difficult for the seniors because continuity of care is disrupted.” —
Office of the BC Ombudsperson, 2012, *The Best of Care: Getting it Right for Seniors in British Columbia Ombudsperson’s Report*



The BCFED calls on the provincial government to end the current successorship exemption for health employers.

Recommendations for BC

- Strengthen the *Labour Code* to ensure that successorship applies when a business contracts work out or brings contracted out work back in-house.
- Broaden Section 35 of the *Labour Code* to address and prevent the problem of subverting a collective agreement through contract flipping.
- End the current exemption of publicly funded health employers from the successorship provisions of the *Labour Code* (as contained in the *Health and Social Services Delivery Improvement Act* and the *Health Sector Partnerships Agreement Act*).



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