

# Reprint **Island Tides**

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## The *Act* that wasn't there

On Tuesday, December 9, at about the same time as the Union and the company were reaching agreement over the staffing of the Essential Services vessels, Premier Gordon Campbell announced that in about an hour, Labour Minister Graham Bruce would be making an announcement. Sure enough, about an hour later, Minister Bruce called for an 80-day cooling-off period, citing as his authority the *Railway and Ferries Bargaining Assistance Act, 1974*, as amended November 27 by *Bill 95, the Railway and Ferries Bargaining Assistance Amendment Act, 2003*.

Bill 95 appears to have been carefully crafted according to instructions provided in the last issue of *Island Tides* (*Dealing With Government—Just Plain Bill*, see [islandtides.com](http://islandtides.com)). It was set out as a series of amendments to the 1974 *Act*, bringing it up to date with a clear reference to BC Ferry Services Inc, which of course did not exist in 1974. Bill 95 was discussed by a legislative Committee of the Whole for, according to Hansard, a total of one minute. The committee was chaired by Harold Long who owns a barge service on the Sunshine Coast. The Minister himself crowed mightily about how clever they had been in 'dusting off' this venerable piece of legislation—almost as if millions had been saved by pulling it out of the recycling bin.

Bill 95 had been introduced in the Legislature by the Minister with an absolute minimum of explanation, though we may be sure that had anyone been listening, they would have known what this ragtag collection of legal-sounding phrases was supposed to do.

### 80-Day Cooling-Off Period

The announcement of the 'cooling-off' period essentially removed the union's right to strike, which had already been severely, and sensibly, circumscribed by the Essential Services legislation, was followed closely by the Union's declaration that it wished to meet with Minister Bruce the following (Wednesday) morning, and that if the 'cooling-off' order was not rescinded by Wednesday noon, the Union would 'shut down the fleet'—no essential services, no nothing.

Minister Bruce (and presumably Premier Campbell) wouldn't budge, despite lengthy meetings with the Union Wednesday morning. So at noon Wednesday, the ships of the BC Ferry fleet made their last runs and headed for their home ports to tie up.

Union President Jackie Miller announced that the Union was prepared to return to the bargaining table immediately, and that

in any event, the Union was prepared to operate the fleet fully from December 19 to December 28 for Christmas travel. By late Wednesday afternoon, the ships of the fleet were all snug in their berths.

The Company immediately asked for a Labour Relations Board Order to force the employees back to work, and were rewarded with a hearing that evening. Lawyers swung into action on both sides.

The problem seemed to be that it was difficult to understand the effect of the *Railway and Ferries Bargaining Assistance Amendment Act, 2003* if you weren't familiar with the *Railway and Ferries Bargaining Assistance Act, 1974*. And the latter is curiously not included in the Revised Statutes of British Columbia.

Nevertheless, late that night, the Labour Relations Board granted an interim back to work order to be effective the following (Thursday) morning. At 2:35am they found a Union official in Nanaimo to serve it on. The Union and the Company duly posted it on their websites. But the picket lines stayed up.

And the following morning the Labour Relations Board hearing reconvened, to hear 'constitutional arguments'—arguments from the Union and the Company about the status of the *RFBA Act 1974*. They were there all day.

At the same time, of course, Mediator Vince Ready was working with the bargaining teams in a marathon 16-hour session.

Late that afternoon, just before the doors closed on the court registry, lawyers for the Company rushed in with a request for the Supreme Court to hear their request for a hearing Friday morning on an Enforcement Order covering the LRB's Interim Back to Work Order. They would ask, they said, for an Order that would subject the Union to fines and possibly lead to some union members being charged with Contempt of Court.

But back at the LRB, the day's proceedings fizzled. The LRB adjudicator 'suspended judgement' on the validity of the 'dusted off' *RFBA Act*. The word was that the 1974 *Act* had in fact been repealed long ago, but nobody knew when. It probably couldn't be amended, and the 'cooling off' order probably had no validity either.

Mediator Vince Ready's marathon continued on into the night. At 11:30pm, the company presented a new offer, saying that it had to be accepted as a package, with no changes. 'Take

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it or leave it.' But the Union naturally wanted time to analyze it. After fourteen hours, Ready and the bargaining teams called it a night. Ready said that he recommended binding arbitration, and that everyone should go back to work on Friday.

Friday morning, the Union, then the Company, announced

their acceptance of Vince Ready's recommendations. BCFS abandoned their efforts in the Supreme Court to have the strike declared illegal. On Friday afternoon, ferries started to move again.✍

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