




What we heard:

Prohibiting replacement workers in federally regulated industries and improving the maintenance of activities process under the *Canada Labour Code*

Final Report

September 2023



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List of acronyms and abbreviations

ATSSC	Administrative Tribunals Support Service of Canada
Code	Canada Labour Code
CIRB	Canadian Industrial Relations Board
ILO	International Labour Organization
NIO	National Indigenous Organization

1. Introduction

A replacement worker is a person who does the work of a unionized worker who is on strike or locked out. Across Canada, workers have the right to go back to their jobs when a legal strike or lockout ends. This means that employers can't **permanently** replace workers just because they were on strike or locked out.

Our consultations focused on **temporary** replacement workers. These workers can be used by employers to fill in for unionized employees while they are on strike or locked out. Many types of workers can be considered replacement workers. In Canada, only the provinces of British Columbia and Quebec currently prohibit the use of temporary replacement workers.

Part I (Industrial Relations) of the *Canada Labour Code* (Code) is the federal law that sets the rules for unionization, collective bargaining, and strikes and lockouts in federally regulated sectors. This includes about 22,000 employers and 985,000 employees working in key sectors such as interprovincial and international transportation, telecommunications, banking, as well as territorial private sector organizations and municipal governments in the three territories.¹ Of all the workers in federally regulated sectors, about 311,900 (34%) are unionized and covered by a collective agreement.

Today, federally regulated employers can temporarily replace workers that go on strike to continue operations.² There are no official statistics on how often employers use replacement workers. However, the Labour Program estimates that federally regulated employers used replacement workers in about 42% of strikes and lockouts from 2012 to 2023. This does not mean that the employer continued operating at full capacity throughout the strike or lockout. It only means that, at one point in that strike or lockout, the employer had someone do the work of an employee who was on strike or locked out.

When unionized workers exercise their right to strike, they sacrifice their pay and benefits. They try to improve their working conditions by putting pressure on their employer. However, the Government has heard that it undermines this right when an employer brings in replacement workers to keep the business going while workers are on strike or locked out.

To make sure that all workers in federally regulated sectors continue to benefit from a meaningful right to strike, the Government has committed to introduce amendments to the Code to prohibit the use of replacement workers in federally regulated sectors.

The Government has also committed to “improve the process to review and certify activities that must be maintained to ensure the health and safety of the public during a work stoppage.”

¹ For a full list of federally regulated industries and workplaces, please visit <https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html>.

² Part I of the Code prohibits employers from using replacement workers during a legal strike or lockout where they are being used to rid the workplace of union representation (e.g., by using replacement workers and refusing to bargain with the union).

During a strike or lockout, Part I of the Code requires employers and unions to continue any activities that are necessary to prevent an immediate and serious danger to the health and safety of the public. It also lays out a process for how to decide which activities need to continue (see Annex A for an overview of this process). Stakeholders have flagged that this process isn't working effectively. They say it is causing unnecessary delays in bargaining, and employers can abuse it to delay workers' right to strike.

Between October 19, 2022 and January 31, 2023, the Minister and officials from the Labour Program of Employment and Social Development Canada consulted with Canadians, unions and labour organizations, employers and employer organizations, and Indigenous partners. To start the consultations, the Government published detailed discussion papers on each topic and invited written submissions and personal stories from stakeholders and interested Canadians. The Government also held targeted roundtables with key stakeholders and Indigenous partners. The main goal of this report is to summarize what we heard during the consultations (section 2) and outline next steps (section 3).

Consultation highlights³

- 1,298 visits to the online consultation pages
- 3,612 visits to the discussion papers
- 45 personal stories and individual comments
- 4 roundtables with union and employer stakeholders, including 3 in-person sessions and one virtual session⁴
- 1 virtual roundtable with Indigenous union voices, Indigenous-owned employers and National Indigenous Organizations (NIOs)
- 71 written submissions, including 41 from employers and employer associations, 28 from unions and labour organizations and 2 from other organizations⁵

2. What we heard

This section provides key takeaways from our consultations with stakeholders and the public. Most stakeholders chose to focus on replacement workers, but many shared their views on maintenance of activities process as well. The feedback we received is organized under the following themes:

- Prohibiting the use of replacement workers
 - Replacement workers in federally regulated sectors
 - Legislation that prohibits the use of replacement workers
 - The current legislation of replacement workers

³ See Annex B for a description of consultation activities.

⁴ See Annex C for a list of stakeholders who participated in roundtable discussions.

⁵ See Annex D for a list of organizations that provided submissions.

- Structuring a prohibition on replacement workers
- Improving the maintenance of activities process
 - The current maintenance of activities process
 - Addressing the issues and improving the process

2.1 Prohibiting the use of replacement workers

Employers and unions disagreed strongly on the topic of replacement workers and whether they should be prohibited. Union stakeholders all supported a ban on replacement workers. Many of them urged the Government to introduce legislation as soon as possible. On the other hand, employer stakeholders strongly opposed the idea and argued the Government should not proceed.

We received 45 personal stories and individual comments during the consultation period, mostly from union members. Many of them shared their own experience with employer's use of replacement workers. All of the individual submissions showed full support for prohibiting the use of replacement workers. They also felt that a ban on replacement workers would empower workers in collective bargaining and provide better protection for them.

2.1.1 General views

Impact of replacement workers

Unions who participated in the consultations all believed that the use of replacement workers should not be allowed. These stakeholders highlighted three key concerns with allowing employers to use replacement workers, arguing that using replacement workers:

- violates workers' right to strike and causes imbalance in collective bargaining;
- creates tensions on picket lines and in the workplace; and
- threatens workplace safety as well as public safety.

Unions stressed that the right to strike is protected by the *Canadian Charter of Rights and Freedoms* and the International Labour Organization (ILO) Convention 87 (Freedom of Association and Protection of the Right to Organise)⁶. Stakeholders quoted the ILO's Committee of Experts on the Application of Conventions and Recommendations which has said that replacing striking workers may violate their right to strike.

⁶ The International Labour Organization (ILO) Convention 87 (Freedom of Association and Protection of the Right to Organise) was ratified by Canada in 1972.

“The right of workers to withhold their labour in order to achieve common goals in their workplace is the foundation of the trade union movement, essential to meaningful collective bargaining, and a fundamental right in our democratic society.”

- Union written submission, January 2023

Balance was also a key issue. Unions told us that employers always have the upper hand in negotiations because they have much more financial power than workers. They stressed that allowing replacement workers makes this imbalance worse by weakening workers’ main tool to exert pressure – the right to strike. Some argued that some employers may use replacement workers as an option to avoid making compromises. They believed that this imbalance of power leads to difficult bargaining processes and makes strikes and lockouts longer.

Unions also argued that when an employer brings in replacement workers, it increases the risk of picket line violence. To prove their point, some unions listed incidents in the past few decades where the use of replacement workers led to conflicts on picket lines. The majority of union stakeholders stated that employers’ use of replacement workers has significant negative impact on labour relations.

Some representatives in a roundtable session raised safety concerns. They said that replacement workers aren’t as well trained as union members. They argued that training is particularly important in critical industries like railways. Some written submissions expressed similar concerns. They suggested that using unqualified replacement workers can result in defective products that lead to public safety issues.

“Recent cases illustrate that accidents can occur when the employer uses scabs. Often, they do not have the training, skills and experience required to carry out the tasks of people on sick leave. In addition, they are often called upon to work long hours, sometimes leading to overwork. Inexperience combined with fatigue increases the chances of incidents or even more serious work accidents that can even put the health and safety of the population at risk.”

- Union written submission, December 2022

In contrast, employers argued that Part I of the Code currently sets the right balance of powers between employers and unions. Several employers pointed to the Sims Report of 1996 that recommended the current limited ban on the use of replacement workers.

In 1995, the then Minister of Labour tasked three respected experts in federal labour law with a wholesale review of Part I of the Code. The experts, headed by Andrew Sims, summarized the results of the review and submitted the Sims Report *Seeking a Balance* in 1996.

Employers argued that this review made many recommendations, but it didn’t recommend a blanket prohibition on replacement workers. They noted that the review found replacement workers necessary sometimes for keeping a business economically viable.

Employers further indicated that nothing has changed since the Sims Report and the introduction of the current Code. Some argued that the use of replacement workers is rare, and no evidence has shown

the need to fix the current system. They stated that prohibiting the use of replacement workers would be a solution looking for a problem.

On the topic of balance, employers took a different position than unions. They stated that the right to strike is balanced by the legal ability to use replacement workers, when necessary, not the right to lock out.

"The use of replacement workers balances the union right to strike, and maintains the safety and security of sensitive industries, like nuclear, or the security of the supply chain for transport, which is relied upon every day by Canadians."

- Employer written submission, January 2023

Employers in sectors such as transportation, telecommunications and agriculture were particularly concerned about the impact that a replacement worker prohibition could have on their production and/or services. They argued that being able to use replacement workers helps avoid or reduce the negative impact of a strike or lockout on businesses, on the economy and on the life of Canadians. One employer submission suggested that although using less skilled replacement workers can reduce efficiency, it would still be better than a full shutdown of operations during a work stoppage.

"Employers must be able to maintain essential services, and their business's viability, when there is a strike, by having the option to use replacement workers."

- Employer written submission, January 2023

Impacts of replacement worker prohibition

Unions agreed that prohibiting the use of replacement workers would bring positive changes. Many referred to the existing legislation in British Columbia and Quebec. They suggested that the Code should include a similar prohibition.

According to union stakeholders, a replacement worker ban would benefit the collective bargaining process by restoring a balance between employers and workers during a work stoppage. They stated that fairer balance of power in collective bargaining would lead to better pay for workers and reducing wage inequality. Some written submissions also noted that the prohibition has the potential to increase unionization rate. They said it would encourage young generations to join the industry by providing better negotiated pay and working conditions.

"Banning scab labour will provide a long-overdue improvement of the right and power of workers to bargain collectively... This power is suppressed when employers use scab labour to replace the work of their striking employees, and this is true regardless of whether replacement labour comes from within the unionized workforce, from management or hired externally."

- Union written submission, January 2023

Indigenous labour representatives suggested that Indigenous workers can benefit from the prohibition to reach a collective agreement with higher pay and better working conditions. They further noted that it will encourage good relationships between Indigenous and non-Indigenous.

Labour Program

Another positive effect that unions brought up many times was improving labour relations. They indicated that prohibiting the use of replacement workers would reduce the tension between workers and the employer as well as among workers themselves. This would lead to better labour relations and help create a harmonious workplace, unions said.

We also heard from some union stakeholders that they disagree that the prohibition would have negative impact on the economy. They believed that a replacement workers ban would bring earlier resolution of disputes, which would eventually benefit the economy. Some unions noted that many advanced economies in the world have implemented a replacement workers ban. They also indicated that in Canada, both Quebec and British Columbia have strong economies despite banning replacement workers.

“A federal ban on replacement workers would in no way be exceptional, either in Canada or abroad.”

- Union written submission, January 2023

On the other hand, employers presented several arguments against prohibiting replacement workers.

First, employer representatives in roundtables argued that prohibiting replacement workers would lead to an imbalance to Part I of the Code. They reiterated that the right to strike isn't balanced by the right to lock out, but rather by the legal ability to use replacement workers, if necessary. They argued that the Government never viewed the use of replacement workers as a problem before 2022. According to them, nothing had fundamentally changed in federal labour relations since the Sims Report in 1996. Employers also noted that the report did not recommend prohibiting replacement workers because there may be times when their use is necessary.

Most employers argued that a prohibition on the use of replacement workers would result in longer and more frequent work stoppages. Research from British Columbia and Quebec that found prohibitions lead to longer and more frequent strikes was also highlighted.

Some employer stakeholders indicated that by banning replacement workers, Canadian companies may be forced into deals they can't afford, and it will make them less competitive. They suggested that to avoid strikes in the future, some companies could start looking to outsource or contract out some of their work.

There was also the concern that smaller bargaining units may have the ability to shut down company-wide operations, in some cases resulting in thousands of layoffs. Employers argued that this could mean significant harm to Canadians, especially in critical sectors like air, rail and marine transport. To avoid serious consequences in the supply chain and the economy, employers suggested the government may need to rely on back-to-work legislation more often.

“The evidence shows that a ban on the use of temporary replacement workers means the following:

- Critical services to Canadians will be disrupted more regularly.*
- Strikes will be more common and will last longer.*
- The labour relations climate will become more confrontational.*

• *Back-to-work legislation will be required more often.*

- *Employer written submission, January 2023*

Many stakeholders expressed concerns that disruptions due to work stoppages could have serious negative impact on the Canadian supply chain. According to them, this could result in a series of consequences, including harming the safety and security of Canadians, reducing Canada's competitiveness as a trading partner and a place to do business, and damaging the Canadian economy. Some written submissions also referred to the National Supply Chain Task Force Final Report⁷ and called for the Government to consider avoiding labour disruptions as a priority.

"Canadian manufacturers are some of the biggest users of transportation services that falls under this legislation. Transportation services are a critical link that sustain manufacturing supply chains. It is how we move critical components for production and our goods to markets across Canada, North America and globally. Given the many disruptions of the past year and the ongoing supply chain disruptions, our industry cannot afford future interruptions to transportation network."

- *Employer written submission, January 2023*

2.1.2 Views on the current, limited prohibition under the Code

In terms of the current limited ban on replacement workers under Part I of the Code, union and employer stakeholders also have different views.

Unions and union representatives argued this provision is totally ineffective. Many stakeholders argued that the current legislation requires unions to prove the employer's intent of using replacement workers, but it's an extremely high test to meet. Some suggested that the use of replacement workers in and of itself is an unfair labour practice.

"This test is so onerous that very few unfair labour practice challenges have been brought under this provision."

- *Union written submission, January 2023*

Employers, however, told us that the current prohibition strikes the right balance. They said that it allows employers to use replacement workers to limit the impacts of a strike, but it also prevents employers from using replacement workers as a way to refuse to negotiate with the union. In a roundtable session, one employer representative indicated that if the provision isn't working properly, it should be tweaked and better enforced instead of prohibiting all replacement workers in all situations.

⁷ https://tc.canada.ca/sites/default/files/2022-10/supply-chain-task-force-report_2022.pdf

“Within our current labour relations system, replacement workers allow organizations in sectors such as trucking, rail, ports, telecom, and air, to provide a basic level of service that preserve critical services to Canadians.”

- Employer written submission, January 2023

2.1.3 Views on how to structure a prohibition on replacement workers

What should be prohibited and what should be exempted

Unions and union representatives generally called for a comprehensive prohibition. They believed the prohibition should prevent employers from sending anyone to do the work of a striking or locked out workers, no matter the reason. For most unions, this included prohibiting the workers who are on strike or locked out from being able to work, if they chose to.

Most unions also argued there should be no exceptions to the prohibitions. However, some suggested that employers can use replacement workers under certain circumstances:

- Some said that employers could use managers hired before bargaining began, as replacement workers during work stoppages.
- One union indicated that members of the bargaining unit could cross the picket line and continue their jobs if they wish to.
- Some stakeholders said that employers should only be able to use replacement workers to protect public health or prevent destruction of property.

Unions also wanted to avoid any loopholes in the prohibition. As a result, some proposed that the prohibition should not focus on the types of workers the employer can and can't use, but on the work that can't be done. They argued this was the best way to prevent employers from automating or outsourcing unionized jobs while workers are on strike or locked out.

“Legislation prohibiting the use of replacement workers in federally regulated sectors should clearly ban all replacement workers in federally regulated sectors in all circumstances, except where public safety or health is at risk; the current ban does not go far enough.”

- Union written submission, January 2023

Employers fundamentally disagreed with the concept of prohibiting replacement workers. The majority weren't willing to discuss how to structure the prohibition. Their strong position was that the Government should not proceed. When employers discussed the specifics of a replacement worker ban, they focused on the exceptions that the prohibition should include:

- Most employers believed that they should be able to use managers to replace employees during a work stoppage.
- Some suggested that the prohibition should not apply to bargaining unit members who choose to cross the picket line and other employees who are hired before bargaining begins.

- Some asked to include workers who provide essential services or perform work that has significant economic impact on the public and/or the employer.
- Several employers also noted that they have longstanding relationships with contractors, and the prohibition should not affect their ability to continue those relationships.

Employers in rail, maritime, airlines, agriculture, telecommunications, and broadcasting asked for exemptions for their specific sectors. These stakeholders consider all or at least part of their work as essential.

- Many were concerned about the negative impact on the Canadian supply chain of a replacement worker ban. Employers in rail and maritime indicated that using replacement workers allows them to transport essential and/or hazardous goods safely, which protects public health and safety.
- Employers in the agriculture industry cautioned the significant impact of railway strikes or lockouts on the agricultural products deliveries. They asked that grain shipments be exempted from the replacement worker ban.
- Airlines, especially Indigenous-owned airlines working with remote communities, underlined the importance of maintaining their services. They stated that not being able to use replacement workers to transport essential goods and services could cause health and safety issues for First Nations and Inuit communities.
- Employers in telecommunications referred to the impacts of the 2021 Rogers outage to highlight the need for telecommunications service to continue despite any strike or lockout.

“Further, given the potential negative impacts on federal infrastructure, the government should consider which industries should be subject to further exceptions to protect supply chains and integral operations.”

- Employer written submission, January 2023

Some employer stakeholders acknowledged that certain employers may use replacement workers in a way to avoid bargaining or undermine the union. To deal with these few bad actors, some recommended strengthening the language in the current Code rather than prohibiting replacement workers altogether.

What we also heard from one employer was that the prohibition should only apply when the employer has locked out its employees, but not when the union chooses to strike.

How should the prohibition be enforced

Union stakeholders were united in their support for strong enforcement mechanisms. Their proposals were generally focused on two things:

- imposing financial penalties on employers who violate the prohibition, and
- making sure a third party has the power to investigate complaints.

Labour Program

Unions indicated that monetary penalties or fines should be high enough to make sure employers respect the prohibition. One union submission indicated that people who work as replacement workers should face consequences as well.

When it comes to investigating complaints, many unions suggested that Quebec's model – where the Minister can appoint an investigator – should be followed. They stressed that inspectors or investigators should have the tools to stop the violation instead of just making a report to the Canada Industrial Relations Board (CIRB). Some suggested that the investigation should allow union representation. Others proposed that the employer should be responsible to prove that they aren't using illegal replacement workers, if there is a complaint.

“In terms of enforcement, the Code must impose a reverse onus on the employer to prove that they are not using replacement workers... This is particularly important because, in the case of a lockout or strike, union members will not be present on the worksite and are less able to monitor the employer's activities and collect evidence by which to prove that the employer is breaching the Code and using replacement workers.”

- Union written submission, January 2023

There were some areas where employers and unions could agree. For instance, they both indicated that the CIRB and the Federal Conciliation and Mediation Services could use more resources to help make quicker decisions and better assist the parties in negotiation.

When it comes to enforcement, few employers discussed it, and they said that there was no need to impose financial penalties. Instead, they indicated that an order to stop the use of replacement workers would be enough. Some employers further suggested that the Government properly enforce the current, limited prohibition rather than create a new prohibition.

“Finally, in the event that a breach on the use of replacement workers is found, [the employer] submits that a cease and desist order would be a sufficient remedy. Any further remedy, such as the issuance of fines, would be overly punitive, especially in the context of a strike or lockout where the employer is already suffering significant economic harm.”

- Employer written submission, January 2023

Other issues raised

During consultations, stakeholders took the opportunity to raise other issues that aren't strictly about replacement workers.

Reinstatement

Currently, the Code protects employees from losing their job or facing discipline just because they were on strike or locked out. However, this is based on the CIRB's interpretation of the Code. It isn't stated in black and white. We heard from some unions that the legislation should strengthen this protection of workers' right to reinstatement after a work stoppage.

Arbitration after long stoppage

Two unions called for the Government to provide a mechanism to end longstanding strikes. They recommended introducing the right to apply for interest arbitration when a work stoppage lasts longer than a set amount of time.

Several employer stakeholders also recommended amending the Code to grant authority to the Minister of Labour and Seniors or Cabinet to refer labour disputes in critical sectors to binding arbitration if the parties can't reach a negotiated agreement through collective bargaining. One stakeholder further proposed that the Government consider the US model that provides mandatory dispute resolution procedures and the option of issuing non-binding recommendations to prevent harmful work stoppages.

Other actions to reduce replacement workers

To limit the use of replacement workers, some unions asked to stop issuing work permits to foreign workers who come to work as replacement workers under any circumstances. Two union stakeholders also called on the Government to lead by example and remove language that promotes or requires the use of replacement workers by contractors during a strike or lockout from future contracts.

Secondary picketing⁸

Some employers suggested that if the Government prohibits replacement workers, it should also prohibit secondary picketing, like in British Columbia.

2.2 Improving the maintenance of activities process

During consultations, stakeholders spent less time on maintenance of activities issues than they did on replacement worker-related topics.

The feedback from unions and union representatives focused mostly on the questions posed in the discussion papers. Most of them commented on three issues:

- the processing time of maintenance of activities requests,
- the need for review of maintenance of activities agreements, and
- the involvement of the Minister of Labour and Seniors in the process.

Employers and employer representatives generally focused on the criteria and threshold for activities that should continue during a strike or lockout.

⁸ Secondary picketing is when union members picket outside a location that is not controlled by their employer.

2.2.1 General views on maintenance of activities process

Unions generally signalled their respect for the CIRB and its work. However, many agreed that the maintenance of activities cases before the CIRB take too long to resolve and unnecessarily delay the right to strike.

Some stakeholders indicated that the law is unclear about which activities need to be maintained. They suggested that this contributes to more cases before the CIRB, and longer delays. Several unions also highlighted that employers can abuse the current process to prevent employees from being able to start a strike. For instance, unions indicated that employers can present large amounts of irrelevant evidence, and cause procedural delays by not being available for hearings.

In fact, many unions expressed concerns over the conflict between maintenance of activities and the right to strike. They indicated that though it's necessary to maintain essential services, the maintenance of activities provisions under section 87.4 of the Code pose a challenging limit to the right to strike.

“The issue of maintenance of activities must always be considered in light of the right to strike, a key aspect of the fundamental freedom of association and central to the labour relations scheme under the Code.”

- Union written submission, January 2023

Several unions indicated that the approach in the Code is in line with the ILO's concept of essential services and should stay the same. They were strongly against the idea of including public economic interest as a reason for maintaining some activities during a strike or lockout. This is in contrary to what we heard from employer stakeholders.

Most employers who discussed maintenance of activities didn't see a problem with the current process. However, their main concern was on the criteria and threshold for what activities need to be maintained.

Many employers suggested that the Code require considering public economic interest when determining what services should be maintained. Some even proposed thresholds (e.g., \$5 million in economic damage). Others suggested language that would require parties to maintain services to support the supply chain and protect critical infrastructure.

“In our opinion, this section should be expanded to provide amongst other things that the maintenance of activities must apply to what is necessary to avoid (i) loss or damage to the employer's or third party's property and equipment; (ii) a significant negative impact on the Canadian, provincial or regional economy; (iii) a negative impact on the supply of the population; or (iv) any other similar situation.”

- Employer written submission, January 2023

A few employers felt that the CIRB prioritizes the right to strike over protecting the public. They also said it is too cautious in ordering activities to be maintained. One stakeholder suggested that the Government should create a list of essential services. Another recommended the Government copy Quebec and list the organizations and companies whose activities are essential.

Employers in rail, marine, air, infrastructure and telecommunications identified their sectors among the most affected by the maintenance of activities process. One employer recommended that the legislation allow maintaining essential activities “without the need to demonstrate an immediate and serious danger.”

Some employers stated that the two topics of the consultations – prohibiting the use of replacement workers and improving the maintenance of activities process – should not be linked together.

“Unless the government is proposing to either significantly reduce the threshold, or somehow broaden the scope of what constitutes an essential service under the Code, there is no utility in linking these two consultations (on replacement workers and maintenance of activities).”

- Employer written submission, January 2023

2.2.2 Views on issues and solutions

Mandatory review of maintenance of activities agreements

The current maintenance of activities process does not require the CIRB, or any other third party to review or validate a maintenance of activities agreement. Before consultations, the Government had heard that this kind of review might be necessary to make sure that the agreement fully protects the public. In Quebec, the Tribunal administratif du travail must approve all essential services agreements or lists before any work stoppage can begin. However, only certain industries like healthcare are required to create these agreements or lists.

What we heard from most unions and union representatives was that there is no need for a third party to review and verify agreements. They argued that the union and the employer are best positioned to make these decisions, and requiring a review will only lead to delays in bargaining. For these stakeholders, it should be enough just to submit copies of the agreement to the Government for their awareness.

In general, stakeholders agreed that if any third party were to review maintenance of activities agreements, it should be the CIRB. They indicated that stakeholders trust the CIRB, and an external organization may not have the expertise required to resolve the issues.

“We also agree that the parties involved in the strike or lock-out should be given the opportunity to negotiate the nature of essential services and, only when disputes arise, should the Canada Industrial Relations Board (CIRB) be tasked with intervening.”

- Union written submission, January 2023

We didn't hear many comments from employers on this topic, and views were mixed. One employer representative agreed with unions' general position that there is no need for third party approval of maintenance of activities agreements. However, two other employer stakeholders suggested the Government create a division within the CIRB to deal only with maintenance of activities issues.

“A division of the CIRB specialized with regards to maintaining operations should be created. Since this division would be solely responsible for hearing cases of maintaining operations, this

specialized division could determine, at all times, if a situation justifies its intervention, and not only if this request has been made within the 15-day period of the notice of dispute.”

- Employer written submission, January 2023

Processing times

Both union and employer stakeholders told us that the maintenance of activities proceedings before the CIRB take too long. Unions submitted two main recommendations to solve this issue:

- First, they argued the CIRB should have enough funding and resources to provide services and resolve disputes quickly. One submission further indicated that “control over administrative tribunal services should be restored to the CIRB” rather than supported by the Administrative Tribunals Support Service of Canada (ATSSC).
- Second, they felt that the Code should impose strict time limits, and both the CIRB and the parties should follow the time limits.

Some employers thought that creating a special division within the CIRB could improve the processing time. Another employer believed it would be better to send maintenance of activities complaints to a different tribunal that is more focused on the public interest.

Minister’s involvement

As outlined in Annex A, the union and the employer have two strict deadlines they must respect. If they miss either of these deadlines, they can’t go to the CIRB to resolve a dispute about maintenance of activities. On the other hand, the Minister of Labour and Seniors has the power to refer a question to the CIRB at any time after notice of dispute has been given. If they miss their deadlines, sometimes stakeholders will ask the Minister to intervene and refer a dispute to the CIRB.

Most union stakeholders told us that the Minister should play less of a role in the maintenance of activities process. They argued that the current process puts the Minister in the difficult spot of needing to ensure the health and safety of the public is protected – but knowing that a referral will temporarily suspend the right to strike. Some union stakeholders suggested that the Minister should focus more on encouraging the parties to negotiate and reach a maintenance of activities agreement. They also asked that the Minister’s participation in the process be fair and transparent.

“This would be especially helpful in circumstances where employers have taken hard-line positions on maintenance of activities, as the intervention by the Minister (through a conciliation officer) could help encourage employers to re-evaluate their positions and negotiate meaningfully over this issue.”

- Union written submission, January 2023

Few employer stakeholders provided comments on this question. Those who did were generally supportive of the Minister’s involvement in the maintenance of activities process. Some indicated that it isn’t a problem because the Minister’s duties include making difficult decisions. Others, despite not

opposing the ministerial involvement, suggested that the Minister should play a more effective role in preventing danger and harm to public health and safety.

“This intervention generally occurs after the damage is done and the Canadian economy has already been affected, sometimes considerably and irreparably. [...] the role of the Minister of Labour could consist of thoughtfully establishing in advance the sectors that are likely to affect the Canadian population significantly and intervening upstream to impose the total or partial maintenance of activities.”

- Employer written submission, January 2023

3. Next steps

We appreciate the feedback and input provided by stakeholders on prohibiting the use of replacement workers and improving the maintenance of activities process. We're also grateful to the individuals and organizations who shared their views and experiences related to the two topics. The government is committed to introducing the legislation that prohibits the use of replacement workers during a strike or lockout in federally regulated sectors by the end of 2023. As we move forward, we will carefully consider what we heard during these consultations.

Annex A: Maintenance of activities process

Part I of the Code requires employers and unions to continue any activities that are necessary to prevent an immediate and serious danger to the health and safety of the public, whenever there is a strike or lockout. The key steps and timelines in this process are below.

Within 15 days of notice to bargain: parties discuss

If an employer or a union believes that any activities need to continue, they must notify the other party within 15 days of starting to bargain. The parties discuss the notice and, if they agree, they can enter into a maintenance of activities agreement at any time. The agreement will state what activities they agree to continue, and how they will continue them. On the other hand, sometimes the employer and union will agree they do not need to maintain any activities during a work stoppage.

The employer or the union can file their agreement with the Canada Industrial Relations Board (CIRB). If they do, it has the same power as an order from the CIRB.

Within 15 days of notice of dispute: application to the Canada Industrial Relations Board

If the parties cannot agree, the employer or the union can ask the CIRB to decide what activities they need to maintain. They must submit this within 15 days of when the employer or the union filed notice of dispute. If they miss this deadline, they can no longer ask the CIRB to step in.

The parties are banned from beginning a strike or lockout until the CIRB makes a decision.

Anytime after notice of dispute: referral from the Minister of Labour and Seniors

The Minister of Labour and Seniors can also play a role. The Minister can ask the CIRB to intervene to decide what activities need to continue during a strike or lockout, even if the parties have a maintenance of activities agreement. The Minister can do this at any point after the employer or union gives notice of dispute, even after a strike or lockout begins.

If the Minister goes to the CIRB before there is a strike or lockout, the parties are banned from beginning a strike or lockout until the CIRB makes a decision. If the Minister goes to the CIRB after a strike or lockout has started, it can continue while the CIRB investigates.

Role of the Canada Industrial Relations Board

When it receives an application from an employer or a union, or a referral from the Minister of Labour and Seniors, the CIRB will investigate. If it decides that some activities need to continue, it can make an order listing those activities and providing any details on how they should continue if there is a strike or lockout.

Sometimes, an employer and union need to maintain so many activities that it can seriously limit their right to strike or lockout. When this happens, the CIRB can order that the parties resolve their disputes in another way, like binding arbitration.

Annex B: Consultations overview

The Government launched the consultations on the Minister's mandate commitment to prohibit the use of replacement workers and improve the maintenance of activities process under Part I of the *Canada Labour Code* (Code) on October 19, 2022. The consultation period was originally scheduled to end on December 16, 2022. It was then extended to January 31, 2023 to ensure that stakeholders had enough time to provide feedback and comments.

The consultation provided two main channels for feedback and input.

- Consultation web page: All Canadians could access the discussion paper and send their written submissions or share their personal stories to the consultation inbox.
- Five roundtable meetings with select stakeholders and Indigenous partners.

The Minister and Labour Program officials held three in-person roundtables in Toronto and Ottawa. A total of 17 employers and employer organizations from the federally regulated private sector and 15 unions and labour organizations attended the in-person roundtables. A virtual roundtable was also held with the Minister and Indigenous partners, including Indigenous employers, National Indigenous Organizations (NIOs) and Indigenous voices from within Canada's labour movement. To include as many stakeholders as possible in the roundtable consultations, Labour Program officials held another virtual roundtable with stakeholders who had not participated in earlier events.

The roundtable discussion was generally divided into two parts: prohibiting the use of the replacement workers and improving the maintenance of activities process under Part I of the Code. Conversations on replacement workers focused on two areas: the impact of using replacement workers and how to structure the replacement worker prohibition. The maintenance of activities process discussions focused on the pros and cons of current maintenance of activities process as well as how to address specific issues identified by stakeholders. Questions for discussion were based on the discussion paper published on the consultation webpage.

Following the roundtables, we received 71 written submissions. 41 came from employers and employer organizations, 28 from unions and worker advocacy groups and 2 from other organizations. Besides, over 5,000 people visited the consultation webpages including the discussion papers, and 45 submitted personal stories and individual comments.

Annex C: Ministerial roundtable discussions

A total of 55 stakeholders participated in the roundtable discussions held as part of the consultations on prohibiting the use of replacement workers and improving the maintenance of activities under the *Canada Labour Code*. They represented the following organizations:

Employers and employer organizations

Air Canada
Air Creebec
Air Inuit
Armateurs du Saint-Laurent (ASL)
Bell Canada
British Columbia Maritime Employers' Association (BCMEA)
Canada Post
Canadian Association of Broadcasters (CAB)
Canadian Chamber of Commerce
Canadian Federation of Independent Business (CFIB)
Canadian National Railway
Canadian North (First Air)
Conseil du patronat du Québec (CPQ)
Eastlink
Enbridge Inc.
Federally Regulated Employers – Transportation and Communications (FETCO)
Groupe Océan Inc.
Halifax Employers Association
Maritime Employers Association
National Airlines Council of Canada (NACC)
NAV CANADA
Oceanex Inc.
Purolator
Railway Association of Canada (RAC)
Rogers Communications
Telus
UPS
Viterra
WestJet

Unions and labour organizations

Air Line Pilots Association, International (ALPA)
Alberta Federation of Labour (AFL)

Canadian Labour Congress (CLC)
Canadian Merchant Service Guild (CMSG)
Canadian Union of Postal Workers (CUPW)
Canadian Union of Public Employees (CUPE)
Centrale des syndicats démocratiques (CSD)
Confédération des syndicats nationaux (CSN)
Fédération des travailleurs et travailleuses du Québec (FTQ)
Grain Workers Union Local 333
International Association of Machinists and Aerospace Workers (IAMAW)
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
Professional Institute of the Public Service of Canada (PIPSC)
Public Service Alliance of Canada (PSAC)
Seafarers' International Union of Canada
Syndicat des travailleuses et des travailleurs de Radio-Canada (STTRC)
Teamsters Canada
Teamsters Canada Rail Conference (TCRC)
Unifor
Union of Northern Workers (UNW)
United Steelworkers (USW)

National Indigenous Organizations (NIOs)

Assembly of First Nations (AFN)
Congress of Aboriginal Peoples
Native Women's Association of Canada

Annex D: Written submissions

The following 71 organizations made written submissions (3 organizations made 1 submission) as part of the consultations on the Minister of Labour and Seniors' 2021 mandate letter commitment:

Employers and employer organizations

Air Creebec
Air Transat
Alberta Chambers of Commerce (ACC)
Armateurs du Saint-Laurent (ASL)
Bell Canada
British Columbia Maritime Employers' Association (BCMEA)
Business Council of Canada
Canadian Alliance of Maritime Employer Associations (CAMEA)
Canadian Association of Broadcasters (CAB)
Canadian Association of Counsel to Employers (CACE)
Canadian Chamber of Commerce
Canadian Council for Aboriginal Business (CCAB)
Canadian Federation of Agriculture
Canadian Federation of Independent Business (CFIB)
Canadian Manufacturers & Exporters (CME)
Canadian National Railway (CN)
Canadian Pacific Railway (CP)
Canadian Wireless Telecommunications Association (CWTA)
Chamber of Marine Commerce (CMC)
Conseil du patronat du Québec (CPQ)
Coopérative de transport maritime et aérien (CTMA)
Eastern Canadian Tug Owners' Association (ECTOA)
Enbridge Inc.
Federated Co-operatives Limited (FCL)
Fédération des chambres de commerce du Québec (FCCQ)
Federally Regulated Employers - Transportation and Communications (FETCO)
Greater Vancouver Board of Trade
Groupe Océan Inc.
Halifax Employers Association (HEA)
Maritime Employers Association (MEA)
National Airlines Council of Canada (NACC)
National Cattle Feeders' Association (NCFA)
NAV CANADA
Oceanex Inc.
Railway Association of Canada (RAC)
Saskatchewan Mining Association (SMA)

Shipping Federation of Canada
St. Lawrence Seaway Management Corporation (SLSMC)
Telus
UPS Canada
Western Grain Elevator Association (WGEA)
WestJet

Unions and labour organizations

Air Line Pilots Association, International (ALPA)
BC Building Trades Council
BC Federation of Labour (BCFED)
Comité intersyndical du Montréal métropolitain (CIMM)
Canada's Building Trades Unions (CBTU)
Canadian Labour Congress (CLC)
Canadian Union of Postal Workers (CUPW)
CUPW Lower Mainland Retirees Organization
Canadian Union of Public Employees (CUPE)
Centrale des syndicats démocratiques (CSD)
Centrale des syndicats du Québec (CSQ)
Confédération des syndicats nationaux (CSN)
Fédération des travailleurs et travailleuses du Québec (FTQ)
Grain Workers' Union (GWU) Local 333
International Association of Machinists and Aerospace Workers (IAMAW)
International Brotherhood of Electrical Workers (IBEW)
IBEW Local 213
IBEW System Council No. 11
International Longshore and Warehouse Union – Canada (ILWU Canada)
International Longshoremen's Association (ILA)
International Union of Operating Engineers (IUOE)
Manitoba Federation of Labour (MFL)
Manitoba Government and General Employees' Union (MGEU)
Public Service Alliance of Canada (PSAC)
Seafarers' International Union of Canada (SIU)
Teamsters Canada
Unifor
United Steelworkers (USW)

Other organizations

Chartered Professionals in Human Resources (CPHR)
Oakbridges Labour Relations Strategists Inc.