

# Prohibiting replacement workers in federally regulated sectors

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## **CBTU SMCC**

CANADA'S BUILDING TRADES UNIONS  
LES SYNDICATS DES MÉTIERS DE LA CONSTRUCTION DU CANADA  
Value on Display. Every Day. Valeur sûre à tous les jours.



## **BACKGROUND**

Canada's Building Trades Unions (CBTU) are the national voice of over half a million Canadian construction workers — members of 14 international unions who work in more than 60 different trades and occupations and generate six per cent of this country's GDP. Our work is not just done on-site, but in a number of facilities that provide modules or other components that are incorporated into the structures that we work on. Once structures are built, we are employed in their renovation, maintenance, and repurposing.

Each year our industry – through our members and contractor partners – invests over \$300 million to fund and operate 195 apprenticeship training and education facilities across Canada. Since 1908, our members have built the roads, bridges, factories, hospitals, schools, and green construction projects that benefit communities and Canadians from coast to coast. As our industry evolves, we continue to adapt our skills and training to ensure our members maintain the highest level of skills in their respective crafts.

## **SUMMARY**

CBTU and our 14 affiliated unions support the Canadian Government's commitment to introduce legislation by the end of 2023 to prohibit the use of replacement workers in federally regulated sectors. A union's right to strike is an important component of collective bargaining, and allowing for replacement workers seriously undermines that right. As will be expanded on throughout this submission, replacement workers should be banned entirely in federally regulated sectors in the Canada Labour Code and stronger penalties should be given to employers who violate workers' right to strike. Legislation prohibiting the use of replacement workers in federally regulated sectors should:

1. 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.
2. Penalties for employers who illegally use replacement workers should be strengthened, including increasing monetary penalties.

### **Question for discussion:**

- 1. What are your views on the current, limited ban on replacement workers under Part I of the Code?**

The limited ban that is currently in place does not go far enough in banning replacement workers and therefore ensuring workers' rights to fair, collective bargaining. Under Section 94 (2.1) of the Canadian Labour Code, no employer is allowed to use





replacement workers “for the demonstrated purpose of undermining a trade union’s representation capacity rather than the pursuit of legitimate bargaining objectives.”

As the Government of the day noted, the burden of proof lies with the union to establish replacement workers are being utilized to undermine the union’s capacity. However, it is difficult, if not impossible, for workers and their union to prove management’s intentions on whether they are utilizing replacement workers to keep the business functioning or for the purpose of undermining a union. As a result, there are only a few cases in which unfair labour challenges have been successfully brought forward under this section of the labour code due to its high threshold.

It is important for the Government to implement a stronger ban on replacement workers (with exceptions permitted for essential services and/or where public safety is a concern). Collective bargaining is a transparent and democratic process that helps balance the relationship between employers and employees. Enabling the continued use of replacement workers undermines collective bargaining, can prolong labour disputes, deter people from joining unions, and create tensions and animosity between workers and their employers.

In British Columbia and Quebec, prohibition on replacement workers legislation has been in place for several decades without a negative impact on businesses operating in those provinces. Rather, it incentivizes employers to negotiate in good faith to reach a new collective agreement.

## **2. Do you believe that the use of replacement workers is a problem in federally regulated sectors?**

Yes, the use of replacement workers remains a problem in federally regulated sectors. As the discussion paper outlined, over the last five years, employers in air, rail, marine transportation and the telecommunications sectors have used replacement workers. The discussion paper also noted that from January 1, 2012 to August 1, 2022, the Labour Program estimates “that employers used other workers and managers to do some or all of the work of striking or locked out employees in about 42 per cent of all strikes and lockouts.” The continued use of replacement workers in these sectors undermines labour relations, the collective bargaining and unions’ ability to represent their workers.

A prominent example of using replacement workers in telecommunications sector is the ongoing strike between IBEW Local 213 and LTS Solutions Ltd. Technicians of LTS Solutions Ltd. joined IBEW Local 213 looking for representation to address low-wages, long working hours and lack of job security.

After certification, LTS Solutions Ltd. refused to meet with the union for bargaining. After two years of failing to reach a collective agreement, the workers voted to go on strike. LTS Solutions responded by dispatching replacement workers at a variety of locations



which undermined the picket line. The strike has now been going on for over three years.

Recently, the Canadian Industrial Relations Board ruled that the employer demonstrated a lack of good faith in bargaining. Despite the favourable ruling, the use of replacement workers was a substantial factor in prolonging the strike. Therefore, it is imperative that language on prohibiting the use of replacement workers in federally regulated sectors be strengthened.

### **3. What are the benefits of using replacement workers in federally regulated sectors?**

Using replacement workers in federally regulated sectors allows employers to continue operations, undermining workers right to strike. Using replacement workers labour pits worker against worker and undermines the union's ability to negotiate with the employer, in good faith.

### **4. What are the downsides of using replacement workers in federally regulated sectors?**

When bringing in replacement workers, there are serious safety concerns that they would not have the training, qualifications or experience of the workers they were brought in to replace. For example, during the 1994-1996 Firestone strike, it was determined that defective tires produced as result of either poor workplace morale or poorly trained replacement workers produced defective tires that were connected to 271 fatalities and over 800 injuries.<sup>i</sup>

In addition, it has been documented that the use of replacement workers results in less workplace productivity. Ontario's Workplaces Review Report noted that one study found replacement workers to be 31 per cent less productive.<sup>ii</sup>

As discussed earlier, permitting employers to use replacement workers takes away the employer's incentive to bargain in good faith. The use of replacement workers also contributes to an unequal power relationship between the employer and their unionized employees.

### **5. How would a prohibition on replacement workers affect your sector?**

Banning replacement workers would strengthen labour relations and collective bargaining in federally regulated industries. It will also ease worker anxieties that they will not be replaced if they choose to engage in their legal right to strike.

### **6. Should people have the right to refuse to do the work of employees who are on strike or locked out, even if the ban on replacement workers does not apply to them?**





All employees should have the right to respect strikes and not fear reprisals for not crossing picket lines. This should include managers and other non-striking employees if they choose to not work as replacement workers.

## **7. Should unionized employees be prohibited from working for the employer if their bargaining unit is on strike or locked out?**

Yes, unionized employees should be prohibited from working for the employer during a strike or lockout. The Canadian Labour Code should replicate Section 109.1(c) of the Quebec Labour Code where every employer is prohibited from using the services of an employee who is on strike or locked out.

The exceptions being in the case of essential services or where there is concern regarding public safety. Essential services should be restricted to bargaining unit members, not replacement workers or managers or anyone other than the employees of the bargaining unit.

## **8. There is no universal definition of a replacement worker. Which types of workers do you think a prohibition on replacement workers should apply to?**

The ban on replacement workers should apply to all unionized employees in all federally regulated unionized employees, with exceptions only made for essential services and/or public safety. The definition should also include the use of Artificial Intelligence and/or automated technology that could be used to replace striking workers.

## **9. What types of workers should be allowed to do the work of striking or locked out employees, if any?**

Exceptions should only be made in the case of essential services, where public safety is a concern, or to prevent damage to the employer's machinery, equipment, or property. During these exceptions, work should be restricted to bargaining unit members and not replacement workers, managers or anyone other than the employees of the bargaining unit.

The Immigration and Refugee Protection Regulations bans the use of migrant labour for replacement workers or if the migrant labour would have any adverse affect on the settlement of the labour dispute. However, there is an exception to this regulation that allows a temporary foreign worker work permit to be issued if those workers on strike are all or almost all are not Canadian citizens or permanent residents of Canada. As a democratic country, Canada should not be distinguishing striking workers based on their citizenship or resident status. A ban on replacement workers must extend to any employee working on Canadian soil.





**10. Do you think there should be any exceptions to a prohibition on replacement workers? Should an employer be allowed to use replacement workers in very specific situations (for example, to prevent destruction or damage to property)?**

As previously stated, the only time there should be an exception to replacement workers during a strike or lockout is in the case of essential services or to prevent damage to an employer's property, equipment or machinery. This work should be restricted to only members of the bargaining unit.

**11. What do you think is the most effective way to make sure that employers respect a ban on replacement workers? How should it be enforced?**

Firstly, the Canada Labour Code needs to be amended to include stronger language that bans the use of replacement workers.

Secondly, to deter employers from illegally using replacement workers, there needs to be strong monetary penalties and an investigatory assessment to determine compliance. For example, in the Quebec Labour Code, the Minister of Labour may dispatch an investigator to the workplace to ensure compliance. The Labour Code provides the investigator the power to carry out an investigation followed by a report to the Minister.

In situations where replacement workers have been illegally used, the employer found to be violating the law should compensate all employees of the bargaining unit their full wages for the period of time replacement workers were used.

**12. What do you think the impact of a prohibition on replacement workers would be:**

- a) on work stoppages?**
- b) on labour relations?**
- c) on the economy?**

As discussed in previous questions, the ban on replacement workers would improve labour relations, collective bargaining and the economy as a whole.

Firstly, prohibiting the use of replacement workers will provide a greater incentive for employers to bargain in good faith. This will help reach new collective agreements faster and reduce the number of work stoppages. Secondly, fewer work stoppages will aid Canada's economy through uninterrupted supply chains and continued tax revenues on labour income and consumer purchases, increasing investor confidence.

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<sup>i</sup> Strikes, Scabs and Tread Separations: Labor Strike and the Production of Defective Bridgestone/Firestone Tires (Alan B. Krueger and Alexandre Mas Source, The University of Chicago Press, 2004)

<sup>ii</sup> Changing Workplaces Review Final Report Review: An Agenda for Workplace Rights (Toronto: Ontario Ministry of Labour, 2017)

