CUPE

Canadian Union of Public Employees

Submission to Employment and Social Development Canada in response to the Federal government's consultation document calling for input from stakeholders on ways to reform the *Canada Labour Code* and the federal labour relations framework

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INTRODUCTION

This submission is in response to the Federal government's consultation document calling for input from stakeholders on ways to reform the *Canada Labour Code* and the federal labour relations framework, published by Employment and Social Development Canada (ESDC) on April 17, 2026, which raises a substantial number of issues concerning amendments to the *Code*.

The Canadian Union of Public Employees (CUPE) is Canada's largest union, representing over 800,000 workers across the country in numerous sectors. Over 35,000 CUPE members work in federally regulated sectors, including workers in airlines, communications, ports, public transit, ferries and rail, and various federal crown corporations, which are directly impacted by the federal labour relations framework. Additionally, given many federally regulated sectors' vital public importance and their high media profile, changes in the federal labour relations framework can indirectly impact CUPE members whose work is regulated by provincial labour legislation by setting the tone for the broader context of labour relations and collective bargaining in Canada.

CUPE welcomes the opportunity to share our perspectives on how the federal labour relations framework could be improved and how labour rights can be advanced in the federal jurisdiction. However, we note with concern the rushed nature of this consultation, and the apparently sweeping range of changes under consideration in an extremely short period of time. There is no meaningful democratic consultation over such a complex and important piece of legislation as the *Code* that is possible in 30 days.

If the Government of Canada is sincere in its intention to improve the federal labour regime for workers, this will require longer, more substantive consultations with workers and the organized labour movement. Further, as a starting point, CUPE joins with other national unions and organizations of the labour movement to firmly state that ongoing respect and protection for the right to strike is non-negotiable for our members and the millions of working Canadians that form part of our movement.

RESPONSE TO REVIEW QUESTIONS

1. Revising the timelines for direct bargaining

- *What is working well with the current direct bargaining process?*

CUPE's goal is to achieve negotiated agreements through meaningful collective bargaining. Insofar as direct bargaining provides the opportunity to negotiate in a free and fair manner – including a protected right to strike – it is working well.

- *What would you change about the current direct bargaining process?*

Any adjustments to the bargaining process must be made with an eye towards strengthening free and fair collective bargaining, which includes protecting workers' ability to use strike action in a timely and decisive manner to incentivize negotiation. It is our view that the existence and frequent use of section 107 have corroded direct bargaining by encouraging employers to surface bargain and engage in delay tactics.

As we detail in our response to questions on section 107, repeat interventions by the federal government in what ought to be free and fair collective bargaining through the use of section 107 – no less than 8 times in an 18-month period starting in 2024, including in rail, at the ports, at Canada Post, and in the airline industry, has poisoned the collective bargaining process.

Last summer Air Canada, for instance, asked for federal intervention against CUPE flight attendant members due to an impasse several days before the strike even began, indicating a clear expectation that the Government would intervene to force CUPE members back to work no matter what. Similarly, the Canada Post Corporation in the most recent round of bargaining almost immediately invoked section 107 and threatened workers with layoffs (the latter of which is likely an unfair labour practice) when job action by CUPW began. Such expectations undermine the purpose of strikes and, in turn, the collective bargaining process itself. Employers now have an incentive to frustrate the bargaining process in the hopes that interest arbitration will ultimately be imposed.

Beyond existing conciliation in the *Code*, further government involvement or extra steps in the form of "tripartite" mediation-arbitration or "special" mediation should be strictly voluntary in nature and not extend collective bargaining timelines or create bureaucratic roadblocks to exercising the right to strike.

- *Should parties be required to begin direct bargaining before the expiry of their collective agreement? If so, how long in advance should parties be required to start bargaining?*

On its own, there is no evidence that requiring parties to bargain before the expiry of a collective agreement will result in a speedier negotiation. However, CUPE has observed an increase in delay tactics used by employers in order skirt negotiations, often with the assumption that the Government will intervene using section 107 of the *Code* (recent examples noted above). Removing section 107 and government intervention on behalf of employers would incentivize bargaining to begin earlier.

- *Should the Labour Program's Federal Mediation and Conciliation Service (FMCS) play a role in early bargaining? If so, what role would be the most constructive?*

Federal mediation and conciliation service involvement in early bargaining should be supportive and voluntary, and government interventions should be limited to facilitating bargaining and have no impact on the right to strike. Any reforms to the collective bargaining framework should focus on promoting good-faith bargaining, not creating extra steps or procedural hurdles.

- *How could good faith negotiations be better incentivized during early bargaining?*

CUPE's experience shows that good-faith negotiations have primarily decayed because of the explicit or implied threat of section 107 and government intervention on behalf of employers that nullifies the right to strike. Employers have no meaningful incentive to bargain productively and in good faith during early, direct bargaining if they can ignore the bargaining process, wait out any resulting job action, and rely on governments to force their workers back to work.

- *Would revised timelines improve the likelihood of parties reaching a collective agreement at the bargaining stage? Would they create challenges for the parties?*

Focusing on voluntary bargaining support and restructuring timelines, so workers have more timely access to the right to strike would create better incentives for employers to bargain productively and in good faith earlier in the bargaining cycle.

- *Are there other approaches that could be taken to provide greater certainty within the collective bargaining process?*

CUPE's position is that the only way that the government of Canada can ensure "certainty" in the collective bargaining process is through voluntary support and facilitation. The best collective agreements are those that are freely negotiated, but genuine negotiation carries a level of inherent unpredictability as the parties navigate a range of complex issues.

2. Revising the conciliation and cooling off timelines

- *Do you suggest revising the current 60-day conciliation and 21-day cooling-off periods? How long should the conciliation and cooling-off periods be?*

The *Code* already contains the longest cooling off period of any Canadian labour relations jurisdiction. Many jurisdictions have no such period (Quebec, Manitoba), and most provinces have much shorter cooling off periods ranging from 2 days (BC) to 16 days (Ontario). The most common period is 14 days (Saskatchewan, Nova Scotia, Alberta PEI and New Brunswick). No Canadian labour relations jurisdiction contains a cooling off period that approaches 21 days.

If anything, the cooling off period should be shortened to 14 days to bring the *Code* in line with other jurisdictions. Some CUPE members in the federal sector have described the cooling-off period as "useless" in discussions. More opportunities to bargain (without further delaying access to the right to strike) would promote more timely agreements.

- *In what ways would this revision impact your organization or members?*

More opportunities to bargain would promote more productive and good-faith bargaining without further restricting timely access to the right to strike, which provides an incentive for negotiation. Extending the cooling-off period would worsen the process, not improve it.

- *What would be the impact of your suggested timelines on the likelihood of parties reaching a collective agreement?*

CUPE members have suggested that more opportunities to bargain (again, without delaying access to the right to strike) would likely result in more productive bargaining and more timely conclusion of negotiations in several vital sectors, including ports.

- *What are the risks of lengthening or reducing these timelines?*

Lengthening these timelines amounts to an attempt to unreasonably restrict access to the right to strike and would further corrode the incentive structure around timely bargaining. The Government should avoid creating redundant steps or creating additional bureaucratic hurdles to the right to strike. This only encourages unproductive and surface bargaining in early, direct bargaining by creating incentives for employers to delay.

- *What other measures could help incentivize good faith negotiations and reaching agreements at this stage of collective bargaining?*

Most provincial labour relations statutes (e.g. Ontario, Newfoundland, Nova Scotia, Alberta, New Brunswick) provide for a 14-day conciliation period that can be extended upon the mutual consent of the parties. Other provinces contain slightly longer time frames (BC: 20 days, PEI: 24 days, Manitoba: 30 days), but only Saskatchewan has the same 60 days conciliation period currently found in the *Code.*

Further extending conciliation in the *Code* would make the Federal jurisdiction even more of an outlier. Federal conciliation should focus on facilitating bargaining and have no impact on the right to strike. Any reforms to the collective bargaining framework should focus on promoting good-faith bargaining, not creating extra steps or procedural hurdles.

There are a number of functions assigned to the Canada Industrial Relations Board (CIRB) that the CIRB lacks the resources to support. Proper resourcing of the CIRB so it can fully realize its mandate, including supporting parties with Maintenance of Activities Agreements (MAA), could improve the effectiveness of conciliation services.

3. Revising the timeline for notice of strike or lockout

- *What is working well with the 72-hour notice period before a strike or lockout? What are the challenges?*

Insofar as there is a clear “trigger mechanism” for accessing the right to strike, the 72-hour notice is working well in CUPE’s view.

- *What are the risks or benefits of modifying the notice period?*

The notice period is currently one of the longest of any Canadian jurisdiction, and much longer than many comparable international jurisdictions.[1] Many provincial statutes do not contain any strike or lockout notice requirement (Ontario, Quebec, Newfoundland, PEI, Manitoba). Other provinces (Saskatchewan, Nova Scotia, and New Brunswick) contain a 24 or 48-hour notice period. Only Alberta and British Columbia have 72-hour notice periods similar to the period found in the *Code*. The Federal notice period should not be extended any further.

- *Are there other approaches that should be considered?*

There should be no changes that add additional steps or delays before workers can access the right to strike, nor should the ability to fully carry out a strike once notice has been given be restricted. The Government can play a productive role in preventing negotiations from moving to strike or lock-out based on CUPE's recommendations above, and by providing voluntary mediation services through the CIRB during a strike or lock-out to bring parties back to the table.

4. Creating a new special mediator role

- *Do you think a special mediator could be helpful in supporting parties to reach a collective bargaining agreement?*

Any proposals for amendments to the *Code* addressing collective bargaining dispute resolution processes, such as "special" or enhanced forms of mediation, should involve joint selection by the employer and the union (as in Conciliation Boards in other Canadian jurisdictions). Any additional conciliation-mediation step should not be accompanied by an extension of existing bargaining timelines.

CUPE notes with concern that the language of "Special Mediator" seems to be inspired by the Special Mediator position in the United States Railway Labour Act (RLA), a retrograde, hundred-year-old piece of legislation created explicitly to end the right to strike through a system of byzantine referrals, boards, repeated "cooling-off" periods, etc. Historian Joseph McCartin describes the RLA regime as "a system where the presence of unions [is] protected as long as they [abide] by rules that [make] it nearly impossible for them to engage in collective action."[2] During the Industrial Inquiry Commission on West Coast Ports, the Railways Association of Canada – an employer lobby representing the US-owned freight rail duopoly – explicitly advocated for eliminating the right to strike in the federal jurisdiction by aligning Canadian federal labour law with the RLA. This would have disastrous impacts on Canada's labour relations and would represent a complete break with Canada's unique social contract.

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[1] EPSU, "Right to Strike Country Fact Sheets" *European Public Services Union*, 2021. https://www.epsu.org/article/right-strike-country-factsheets

[2] Compa, Lance. 2023. "US Labour Law and the Right to Strike." International Union Rights 30 (1): 9–12. https://doi.org/10.1353/iur.2023.0003; McCartin, Joseph A. 2023. "The Railway Labor Act: Exhibit A in Our Outmoded System of Labor Law." New Labor Forum 32 (3): 34–41. https://doi.org/10.1177/10957960231194023

Additionally, the RLA regime has resulted in extraordinary delays in bargaining in sectors under its jurisdiction, as long as six years. The "hall of mirrors" system of negotiations in the United States is not a solution to delays in collective bargaining resolution in the Federal jurisdiction.

We are somewhat reassured that the recommendations of the Industrial Inquiry Commission make reference to a mediation framework based on Section 76 of the *B.C. Labour Relations Code (B.C. Code) [RSBC 1996] Chapter 244*,[3] rather than the RLA-style special mediator proposed by the employer lobby, but we remain skeptical of any additional steps to bargaining that would delay the right to strike, and must stress our opposition to an RLA-style system.

- *At what stage of the collective bargaining process would the appointment of a special mediator be most beneficial?*

There may be value in replacing the current 21-day "cooling off" period with some form of "special" or enhanced mediation, provided it has clearly defined roles and limits to its powers, and does not further delay or restrict access to the right to strike.

- *Should parties be required to provide information to a special mediator? What kinds of information?*

As noted in the discussion, section 105 already establishes ministerial authorities for conciliation or mediation, though the Commission noted that the current conciliation-mediation framework under section 105 is limited in its ability to compel disclosure or testimony from the parties. If conventional conciliation-mediation has been exhausted, it may be valuable for an enhanced form of mediation to be able to compel information not previously disclosed by the parties, provided this form of investigation does not lengthen bargaining timelines.

- *What would be an ideal timeframe for a special mediator to perform their duties? How should the time be allocated for special mediation and report writing?*

Any form of "special" or enhanced mediation should not contribute to further delays to timely access to the right to strike. The current timelines must not be lengthened by any additional steps.

- *Are there any additional tools that should be provided to a special mediator to support the successful conclusion of collective agreements?*

CUPE does not see what additional tools would promote timely conclusion of collective bargaining if granted to a special mediator, all else being equal.

- *Do you see any benefits to a report to a Minister being made public? Would you have any concerns?*

[3] Ministry of Employment, Workforce Development, & Labour. *Industrial Inquiry Commission on West Coast Ports: Final Report*. May 8, 2025.

Reports from any form of mediation should be disclosed with the consent of both parties, as with Conciliation Boards in other Canadian jurisdictions.

- *Should the appointment of a special mediator delay the statutory right to strike or lockout? Why or why not?*

No. Any time allocated for "special mediation," including the time to file a report, should be built within current timelines.

5. Reviewing section 107

- *What are your views on the use of section 107?*

CUPE's position is that the mere presence of section 107 of the *Code* has a corrosive effect on collective bargaining and the use of section 107 represents a serious and substantial attack on the right of workers to freely collectively bargain their wages and working conditions. The powers exercised by the Minister of Labour under section 107, described as functionally arbitrary by experts in labour law such as scholar David Doorey, have been used to enable the Minister to unilaterally criminalize strike action or "direct" the nominally independent Canada Industrial Relations Board (CIRB) to make certain rulings.

This leaves the ability of workers in sectors regulated by the *Code* to exercise a constitutionally protected right to the political whims of the sitting Minister of Labour, and subject to pressure by business groups and other lobbyists – as was apparent in both the recent invocation of section 107 against CUPW and CUPE members' strike at Air Canada, and in the Ports of Quebec and Montreal.

- *What are the impacts of section 107 on the federal collective bargaining process?*

In CUPE's view, repeat interventions by the federal government in what ought to be free and fair collective bargaining, and particularly the presence and frequent invocation of section 107 across the Federal jurisdiction, including in rail, at the ports, at Canada Post, and in the airline industry, has poisoned the collective bargaining process.

Last summer Air Canada, for instance, asked for federal intervention against CUPE flight attendant members due to an impasse several days before the strike even began, indicating a clear expectation that the Government would intervene to force CUPE members back to work no matter what. Similarly, the Canada Post Corporation, in the most recent round of bargaining, almost immediately invoked the section 107 and threatened workers with layoffs (the latter of which is likely an unfair labour practice) when job action by CUPW began. Such expectations undermine the purpose of strikes and, in turn, the collective bargaining process itself.

Section 107 represents the most acute example of a deep problem in Canadian labour relations, what Labour scholars Leo Panitch and Donald Swartz have described as a regime of "permanent exceptionalism" where Canadian governments and employers consistently declare their support for collective bargaining rights, while repeatedly finding reasons to circumvent those rights "just this once."[4]

Canada uses back-to-work orders and legislation more than any other G7 country and consequently accounted for 54 percent of complaints of violations of labour rights filed with the International Labour Organization's (ILO) Committee on Freedom of Association against G7 countries between 2002-2019.[5] Last year, the International Trade Union Confederation (ITUC) identified Canada as being among a group of countries where governments are "regularly interfering in collective labour rights or failing to fully guarantee important aspects of these rights" and where "there are deficiencies in laws and/or certain practices which make frequent violations possible," citing Section 107 of the *Code* specifically.[6]

The International Court of Justice found "that the right to strike of workers and their organizations is protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)."[7] As a party to this convention, Canada has committed to defending the right to strike, yet Canadian labour relations are in an untenable situation with demonstrated, egregious disregard for international norms and standards in labour rights. The federal government must lead by example and promote models that respect the right to strike by repealing section 107.

The right to strike extends to economic sectors that are integral to supply chains and the movement of goods, including ports. The ILO has made clear that where alternative options exist for the movement of goods and no immediate risk to life or safety is present, as is the case with Canadian ports, the right to strike should not be restricted.[8] For industries that may be considered essential, the *Canada Labour Code's* maintenance of activities regime already provides a mechanism to address the issue. Furthermore, where infrastructure is critical for the economy, it should remain publicly owned. Public ownership ensures that bargaining is conducted in the public interest rather than to maximize shareholders' profit.

- *What is the most effective use of section 107? How could section 107 be utilized most effectively?*

There is no effective use of section 107. The federal government's frequent and draconian intervention in free and fair collective bargaining on behalf of employers is perhaps the singular reason for the degeneration of effective collective bargaining in the federal sector.

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[4] Evans, Bryan, Carlo Fanelli, Leo Panitch, and Donald Swartz. 2023. *From Consent to Coercion: The Continuing Assault on Labour*. Toronto: University of Toronto Press

[5] Evans et al., Ibid.

[6] ITUC-CSI-IGB, *2025 Global Rights Index*. https://www.ituc-csi.org/IMG/pdf/en__global_right_index_2025__final_web.pdf?42561/2dadb6a0c1eacc71d32d3f2f6ef8702cb163d152bd2dc8e5cc9ae3e96e031476

[7] Right to Strike under ILO Convention No.87 (International Court of Justice May 21, 2026).

[8] Bernard Gernigon et al., *ILO Principles Concerning the Right to Strike* (International Labour Office, 2000).

Jurisprudence has observed that the loss of the right to strike adversely affects other critical components of the relationship between employers, employees and their union, and substantially interferes with the ability of the parties to reach voluntary settlements by having a "chilling" or "narcotic" effect.[9]

Despite often being invoked under the pretext of promoting "labour peace", section 107 has also failed in this regard. CUPE members and workers across Canada have demonstrated that they view the right and ability to strike as fundamental to their collective interests, whether or not the sitting government is willing to respect that right. The degenerating impacts of frequent invocations of section 107 have only made strikes and lock-outs when they happen more bitter and more polarized, as was noted in the Industrial Inquiry Commission on West Coast Ports which prompted this review.[10]

- *Do you see a role for section 107 to help resolve disputes when parties are at an impasse?*

All Federal intervention in disputes at the strike or lock-out phase, including mediation-arbitration, must be strictly voluntary and with the mutual consent of the parties to a strike or lock-out. Section 107 is a unilateral, draconian measure that corrodes the collective bargaining process, for the reasons outlined above.

- *Are there other tools that should be explored to further assist parties in resolving disputes and reaching a collective agreement?*

The best tools to assist parties in resolving disputes are strictly voluntary in nature and promote agreements reached through free and fair collective bargaining, as described throughout this submission.

6. Assessing examples of bargaining approaches from other jurisdictions

- *In your experience, what are the strengths and weaknesses of the Code's current model of decentralized, enterprise-level bargaining in comparison to labour relations based on sectoral bargaining?*
    - *What would be the anticipated benefits or challenges in introducing sectoral bargaining under Part I of the Code?*
    - *In your view, are there sectors that would benefit from sectoral bargaining and why?*

[9] This was discussed at length in *ATU Local 113 v. HMQRO, 2023 ONSC 3618; Amalgamated Transit Union, Local 113 v. Ontario*, 2024 ONCA 407, in which CUPE Local 2 was a party.
[10] *Industrial Inquiry Commission on West Coast Ports* (Ibid.)

Reforms supporting sectoral bargaining, geographic certification, and broader-based bargaining may strengthen industrial relations if designed to expand access to meaningful collective bargaining in sectors where the Wagner model does not deliver sufficient bargaining power. The consultation should distinguish reforms that build bargaining power from those that remove it. Sectoral bargaining can be pro-collective-bargaining; expanded essential-services designations are not.

The decentralized, enterprise-based model has succeeded where union density is relatively high, and bargaining units are stable. Existing structures should be maintained where they work, including in sectors where unions have built strong, viable units. But the model is less effective in fragmented, low-density, fissured, franchise-based, contracted-out, or precarious sectors, where enterprise bargaining may leave workers with formal rights but too little leverage to secure meaningful collective agreements. As noted by the Industrial Inquiry Commission on West Coast Ports, the Government should be cautious when making changes that would affect the internal structure of parties. This includes changes that would alter or open up the certification orders of the various bargaining units in the federal jurisdiction.[11]

The government should study a range of broader-based bargaining structures targeted to sectors where the current model does not provide meaningful access to unionization or bargaining strength. No single approach will fit the federally regulated private sector. Options include sectoral bargaining, regional/geographic certification, franchise-based bargaining, and models adapted for independent/dependent contractors or freelance workers. The key design principle is to increase collective voice and bargaining power—not to centralize bargaining in ways that dilute union representation.

Any broader-based model must preserve the right to strike; allow unions to build units over time; require meaningful multi-employer bargaining; prevent employer vetoes; and avoid winner-take-all structures that exclude existing unions or limit workers' choice of representative. Implementation of sectoral bargaining models should not be accompanied by further fragmentation or exceptions to the *Code*, as already exists in ports and airlines.

Broader-based bargaining must include compulsory multi-employer bargaining where appropriate. Employers should not be able to use associations to delay, dilute, or block bargaining, nor should bargaining be controlled by a single employer or a minority veto. Labour boards should have authority to compel meaningful participation and remedy bad-faith conduct.

Sectoral bargaining must protect, not endanger, the right to strike. Broader-based bargaining should not become a pathway to compulsory arbitration or essential-services restrictions.

[11] *Industrial Inquiry Commission on West Coast Ports* (Ibid.)

- *What would be the anticipated benefits or challenges in introducing essential services designations? In your view, would essential services designations strengthen industrial relations?*

CUPE opposes expanding the *Canada Labour Code's* Maintenance Activities regime (also referred to as "essential services"). The *Code* already more than adequately addresses public-interest concerns by requiring maintenance of activities only "to the extent necessary to prevent an immediate and serious danger to the safety or health of the public." That narrow standard protects against genuine health and safety risks while preserving the constitutional right to strike. Expanding it to cover economic disruption, inconvenience, operational continuity, supply-chain pressure, reputational harm, or generalized "public interest" concerns would turn an essential-services regime into an anti-strike regime.

Essential services must remain limited to cases where a work stoppage would create a genuine public health or safety danger as already contemplated by the *Code* and applied by the CIRB. The governing standard is not inconvenience, economic loss, public pressure, or disruption. The ILO standard should apply: "the existence of a clear and imminent threat to the life, safety or health of the whole or part of the population." The *Code's* current provision is already largely in line with standard.

Professor Eric Tucker's article, "Regulating Strikes in Essential Services — Canada," supports this narrow approach. He explains that Canada uses several models to regulate essential-services during strikes, including the unfettered strike model, the no-strike model, and the controlled/designated strike model. He notes that the *Code* is among the few private-sector statutes that address essential-service strikes in advance through a designation model, but the threshold remains narrow: work must continue only where necessary to prevent "an immediate and serious danger to the safety or health of the public".[12] Moreover, recent amendments to the *Code* have made it mandatory for the parties to contemplate and resolve the question of Maintenance Activities early in the collective bargaining process: fifteen days after notice to bargain is served.

In *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, [2015] 1 S.C.R. 245, the Supreme Court held that the right to strike is constitutionally protected because of its role in meaningful collective bargaining. The Ontario Court of Appeal recently applied that principle in *Amalgamated Transit Union, Local 113 v. Ontario*, 2024 ONCA 407 at paragraphs 40 and 41, holding that "any complete ban on unionized workers' ability to strike after the expiry of a collective agreement will invariably 'substantially interfere' with their s. 2(d)-protected collective bargaining rights" and that interest arbitration does not avoid the breach at the s. 2(d) stage; it is only relevant to justification under section 1.

[12] Eric Tucker, "Regulating Strikes in Essential Services - Canada Regulating Strikes in Essential Services - Canada," in *Regulating Strikes in Essential Services: A Comparative "Law in Action" Perspective* (Wolter-Kluwers, 2019).

Expanding essential services designations would likely worsen industrial relations; the TTC case is a warning. In *Amalgamated Transit Union, Local 113 v. Ontario*, the TTC Act removed the right to strike and substituted mandatory interest arbitration. The evidence accepted by the application judge showed that bargaining became "singularly, serially and completely unsuccessful," that losing the right to strike harmed employer-union relationships, and that interest arbitration had "chilling" and "narcotic" effects.

A regime that lets employers over-designate work as essential does not promote harmonious labour relations. It invites litigation, encourages strategic employer applications, weakens incentives to bargain, and shifts power away from workers. The better policy is to retain the current narrow *Code* standard, ensure timely and independent CIRB adjudication, and reject proposals to redefine essential services to include economic harm or generalized public inconvenience.

This is why essential-services expansion is fundamentally different from sectoral bargaining. Properly designed, sectoral bargaining increases workers' capacity to act collectively; expanded essential-services designations reduce their ability to exert collective pressure. The former can strengthen industrial relations; the latter risks constitutional invalidity and bargaining imbalance.

The main issue with the current process is the unjustifiable delays when disputes regarding Maintenance of Activities Agreements are referred to the CIRB for resolution, which is a result of a lack of resourcing of the CIRB to fulfill this mandate. In recent years, the Board has been given responsibility for adjudicating *Code* Part III and IV matters without receiving commensurate funding to ensure that it is adequately supported and staffed to ensure matters can be resolved in a timely manner. Additional resources may be required to ensure that the board operates adequately.

Measures to improve compliance with timeliness and prevent delays should be the focus of any effort to improve the system, as CUPE has noted in previous consultations on the MAA framework.[13]

- *What would be the anticipated benefits or challenges in introducing geographic certification in certain sectors or regions? In your view, would this strengthen industrial relations?*

There is no substantive reason that geographic certification would on its own strengthen or improve labour relations. Geographic certification for bargaining agents at ports has been effective in the American context because the bargaining landscape in the United States is less fragmentary, with a handful of major ports on the West and East coast, with only two trade unions with clearly split jurisdictions (International Longshore and Warehouse Union [ILWU] on the west coast, International Longshoremen's Association [ILA] on the east). This does not reflect the labour relations reality in Canada today.

[13] CUPE, *Submission to Employment and Social Development Canada: Maintenance of Activities*, 2023.

As with above, the Government should not unilaterally make changes that would affect the internal structure of parties. This includes changes that would alter or reopen the certification orders of the various existing bargaining units in the federal jurisdiction, which geographically based certification would certainly do.

As mentioned previously, any changes to bargaining structure should only be in areas with low union density, high fragmentation, contracted-out or precarious sectors where enterprise bargaining does not function adequately or at all.

- *Are there any models from other jurisdictions (in Canada or globally) that could be considered to support collective bargaining negotiations and promote harmonious labour relations?*

CUPE is opposed to the Americanization of Canada's labour relations regime, which seems to be the goal of many employer lobbies. US-style labour law would represent a degeneration, not a "modernization" of the *Code*.

Recent examples from certain provinces demonstrate that the best models are those that do not add intermediaries between unions and employers. In other words, the best model is one that encourages direct negotiation between the parties, without imposing it.

Furthermore, the federal government should look to explicitly strengthen the right to unionization and collective bargaining for workers. The *Canada Labour Code* does not currently provide a statutory mandate to the labour program or another state entity to promote unionization in sectors where union density falls below a certain threshold. This framework exists in Europe, where member states are required to create an action plan to promote unionization if collective bargaining coverage is below a certain threshold. The federal government should have a similar mandate to boost unionization rates.

> - Article 4(2): Member States where collective bargaining coverage is less than 70% […] shall in addition provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them and shall establish and action plan **to promote collective bargaining**. The action plan shall be made public […].[emphasis added].[14]

This mandate to promote collective bargaining would help protect workers in sectors with low union density and strengthen the labour relations system.

[14] Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union, European Commission.

CUPE strongly condemns recent legislative changes in certain provinces regarding collective bargaining and the right to strike. In Quebec, Bill 89, the *"Act to give greater consideration to the needs of the population in the event of a strike or lockout"* [1] has drastically restricted direct negotiation between employers and unions by granting the Labour Minister the power to halt ongoing negotiations at any time and to impose mandatory arbitration. Historically, dispute arbitration damages labour relations and future negotiations, as many issues cannot be resolved in such forum.

CUPE also condemns the expansion of essential services through Bill 89 with the creation of a new, complementary and distinct regime called *"services ensuring the well-being of the population."* This new regime holds the same powers as essential services, but at a much broader level and incorporating private companies. The government should therefore not draw inspiration from the recent legislative amendments in Quebec, which break the historical balance in the labour relations system and stand in direct contradiction to the principle of free collective bargaining between the parties.[15]

7. Introducing expedited grievance arbitration provisions

- *In your view, would an expedited grievance arbitration process strengthen relationships between employers and employees? Are there any risks to introducing a new process?*

CUPE supports improving timely access to grievance arbitration, so long as reforms complement (not displace) negotiated procedures, preserve procedural fairness, and are proportionate to the dispute. Expedited arbitration can reduce backlogs and support workplace relations, but it should be an optional and supplemental process. There is no mandatory one-size-fits-all model that will ever resolve the challenges experienced in the current labour arbitration model.

For instance, small unions or locals may not have the resources to deal with an expedited grievance arbitration process. Small locals are generally not in a position to send many grievances to arbitration during the collective agreement's term and may be disadvantaged by a mandatory expedited arbitration mechanism that could be too fast or too costly to adequately resource.

- *What are your views on grievance backlogs between parties? Do these backlogs present obstacles during collective bargaining?*
    - *If yes, what kinds of challenges or obstacles do they create?*

[15] Mélanie Laroche et al., *Mémoire Sur Le Projet de Loi 89 Loi Visant à Considérer Davantage Les Besoins de La Population En Cas de Grève Ou de Lock-Out* (CRIMT et Université de Montréal, 2025), https://www.assnat.qc.ca/Media/Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_209179&process=Default&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9rjij7p3xLGTZDmLVSmJLoqe/vG7/YWzz

Arbitration remains central to industrial justice, but delay, cost, and increasing legalism have undermined its promise. Expedited arbitration can help if targeted and designed to restore arbitration's core function: timely, fair, expert, accessible workplace justice.

Grievance backlogs may damage labour relations: workers wait for remedies, disputes linger into bargaining, and unresolved conflicts may harden. As former Chief Justice for the Ontario Court of Appeal, Warren Winkler, notes, "a backlog of disputes can lead to a dysfunctional relationship."[16] The Supreme Court has likewise stressed the need for timely resolution of labour disputes (*Health Services*, 2007 SCC 27; *Dayco*, [1993] 2 S.C.R. 230), because unresolved conflict can fester and disrupt the workplace and the public interest.

There is broad consensus that arbitration has become too slow and legalistic, often "costly, cumbersome and delay-ridden."[17] Modern cases can involve human rights, health and safety, electronic disclosure, and complex evidence. However, legalistic, complex and unwieldy processes should not convert every grievance into a full civil trial. Delay can also be driven by unnecessary procedural disputes, often driven by employers with the express intention to frustrate legitimate grievances.

Delay erodes trust: workers see the process as ineffective, and employers may normalize or exploit delay and put in place procedural hurdles.

- *Would an expedited grievance arbitration process assist with addressing backlogs? Are expedited grievance arbitration processes already included in your collective agreement? Why or why not?*

Evidence suggests expedited arbitration can be significantly faster without changing outcomes. Webb and Wagar's review of 554 discharge cases found expedited matters moved more quickly, while the arbitration method was not related to success rates. In that sample, expedited cases averaged about 193 days end-to-end versus about 382 days for traditional arbitration. Workers should not have to choose between timely and fair justice.[18]

Expedited arbitration can strengthen labour relations by resolving disputes before they harden and by triaging routine matters, reserving full hearings for cases needing more process. Former Chief Justice Winkler notes expedited systems (e.g., Canada Post and Ontario's electricity sector) helped reduce backlogs; CUPE has experience with similar approaches, such as in its agreement with Air Canada.

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[16] Warren K. Wrinkler, *Arbitration as a Cornerstone of Industrial Justice* (2011), https://www.ontariocourts.ca/coa/about-the-court/archives/2011-arbitration-cornerstone-industrial-justice/.

[17] Ian Mackenzie, "The Promise of Labour Arbitration: Delayed but Not Forgotten," *Slaw*, November 15, 2013, https://www.slaw.ca/2013/11/15/the-promise-of-labour-arbitration-delayed-but-not-forgotten/.

[18] Shannon Webb and Terry Wagar, "Expedited Arbitration: A Study of Outcomes and Duration," *Relations Industrielles / Industrial Relations* 73, no. 1 (2018): 146–73, https://doi.org/10.7202/1044430ar.

- *If you already have provisions of this nature in your collective agreement, could a supplemental expedited grievance process be complementary and help address backlogs?*

    - *What potential issues or overlaps with your existing collective agreements' grievance processes would this create? How could overlaps be avoided?*

When the parties have already agreed on an expedited grievance process in their collective agreement, the provisions in the *Code* would be complementary and may help address backlogs if they are optional and voluntary. Such an expedited grievance arbitration process would mainly be beneficial to workers of the federal jurisdiction who do not have this type of grievance resolution method in their collective agreement. An expedited grievance process in the *Code* may also help alleviate problems with employers who refuse to abide by grievance timelines, or to accept arbitrator appointments, by creating a mechanism by which a union may voluntarily seek intervention.

- *How could the requirement for expedited grievance arbitration be included in the federal labour relations framework (i.e., for all sectors, specific to certain sectors)?*

CUPE supports an expedited grievance arbitration option only if it is limited, fair, and complementary to negotiated processes, with the parties having the ability to select the arbitrator.

A federal approach can draw from the timelines adopted in BC and Ontario, but should not override mature, negotiated grievance systems. In Ontario (LRA, 1995, s. 49), a party can request a single arbitrator; the Minister appoints the arbitrator, the arbitrator must start hearings within 21 days, and reasons are to be delivered promptly. In British Columbia (Labour Relations Code, s. 104), hearings must commence within 28 days and decisions are due within 21 days after the hearing concludes.

The *Canada Labour Code* should offer a statutory expedited option that is ***supplemental,*** not a replacement for negotiated procedures. Where parties already have effective expedited arbitration, med-arb, referral panels, or special processes, the statutory option should complement, not displace, them.

Proportionality should be the organizing principle: procedure should fit the dispute. Routine scheduling, pay, posting, suspension, or narrow interpretation grievances should not require the same process as discharge or serious rights-based or systemic matters.

Legislation could include a suitability screen: expedited arbitration should be presumptively available for routine, lower-complexity matters and avoid automatic application to serious rights-based or systemic disputes unless the parties agree or the arbitrator is satisfied it can proceed fairly. Arbitrators should be able to convert a case to a fuller process where needed.

Delay is not only caused by statutes or arbitrator availability. It is also caused by parties arriving at the hearing unprepared, with disclosure and preliminary disputes unresolved. An expedited process should drive preparation, not shortcuts: early issue narrowing, core document exchange, agreed facts/admissions where possible, and evidence limited to what is necessary. This would reduce delay without treating every grievance the same, helping clear backlogs and protect procedural safeguards in serious cases.

CUPE supports an expedited grievance arbitration option only if it is limited, fair, optional, and complementary to negotiated processes.

- Optional and supplemental; should not displace bargained expedited arbitration, med-arb, referral panels, or special processes unless the parties agree.

- Suitability screen: presumptive for routine matters (e.g., discipline short of discharge, scheduling, pay, posting, narrow interpretation); not presumptive for discharge, discrimination/harassment, accommodation, health and safety, reprisal, systemic policy, or expert-evidence cases unless parties agree or the arbitrator finds it fair.

- Proportional procedure (limits on evidence/objections, agreed facts, early document exchange, written briefs, concise reasons).

- Decisions with oral or concise written reasons within 21–30 days after the hearing concludes (as appropriate).

- Support training/education for federal-sector labour arbitrators to address capacity constraints while preserving independence.

- Med-arb authority where appropriate to support practical, relationship-preserving resolutions.

- Fairness safeguards: disclosure orders, necessary witnesses, timeline flexibility, and power to convert to conventional arbitration where required.

    - *What would be a reasonable timeline for an expedited grievance arbitration process to complete?*

A reasonable federal model would include the optional ability for the parties to request intervention. Reasonable timelines would be:

- appointment of an arbitrator within 7–14 days of request;
- hearing (or first hearing date) within 21–28 days of appointment;
- decision within 21-30 days after the hearing concludes (or sooner with oral/summary reasons where appropriate);
- flexibility to extend timelines where fairness requires.

These guideposts reflect Ontario and British Columbia models while preserving flexibility for complex cases.

Expedited grievance arbitration can be a practical access-to-justice tool in the federal framework, and a well-designed expedited option can reduce delay without compromising outcomes. The process should be optional, proportionate, fair, complementary to collective agreements, and flexible enough to distinguish routine matters from complex rights-based or systemic disputes.

8. Strengthening training supports for workers impacted by artificial intelligence and automation

- *How are workers impacted by artificial intelligence and automation currently accessing existing training programs?*

Artificial intelligence is spreading fast without adequate laws, regulations, and public programs to protect workers and the public. The federal government should undertake a more comprehensive analysis of the impact of AI on workers and the protections that are needed. One question in an overly broad and brief consultation does not do justice to the multitude of ways this technology can affect the workforce.

Laws, regulations, and public programs are needed to address job loss and work restructuring, invasive surveillance and monitoring, management by algorithm, and bias and discrimination built into workplace AI tools. Job loss and work restructuring due to AI implementation in the workplace are serious concerns for workers. Statistics Canada has found that 31% of workers are in jobs likely to dramatically change or disappear because of AI and 29% of workers are in jobs where they will likely do their jobs alongside AI systems.[19] Some research has indicated that the impact of AI implementation will be gendered, with twice as many women-dominated jobs at risk compared to men-dominated jobs.[20]

Workers' access to retraining opportunities varies greatly depending on collectively bargained re-training rights and the availability and accessibility of publicly-funded re-training opportunities. In the best-case scenarios, employers are required to retrain workers who are affected by technological change through strong technological change or bumping provisions bargained in collective agreements. For workers without these collectively bargained protections, they access retraining through a patchwork of Employment Insurance (EI) Part II Employment Benefits and Support Measure programs. These programs vary by province based on the content of Labour Market Development Agreements (LMDAs) and the Indigenous Skills and Employment Training program (ISET). These supports are not adequate to meet the needs of workers during periods of rapid technological transformation, especially if they impact a large number of workers. They also fail to incorporate union voice in training programs to ensure training meets the needs of workers.

[19] Statistics Canada Government of Canada, "Experimental Estimates of Potential Artificial Intelligence Occupational Exposure in Canada," September 3, 2024, https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2024005-eng.htm

[20] "Generative AI and Jobs: A Global Analysis of Potential Effects on Job Quantity and Quality | International Labour Organization," August 21, 2023, https://www.ilo.org/publications/generative-ai-and-jobs-global-analysis-potential-effects-job-quantity-and

- *Are workers impacted by artificial intelligence and automation facing barriers in accessing training programs? Do these workers have any additional training needs?*

Workers affected by AI and automation face barriers in accessing training programs where job protection and retraining rights have not been bargained in collective agreements.

Our EI system is widely recognized to provide inadequate supports to workers who lose their jobs, whether due to automation or other reasons. The federal government must reduce hours to qualify for EI, increase the benefit rate, and extend the duration of EI to ensure workers' economic security through employment transitions. Harsh rules that disqualify workers who are illegally misclassified as self-employed or are migrant workers should be eliminated.

The federal government should increase funding and ensure union voice in EI Part II, so affected workers have the training support needed to transition to good-quality jobs. The current EI Training Support Benefit is too short to provide access to meaningful training. The benefit should be extended to a minimum of 26 weeks to support greater access to programs that result in certifications. Workers who are currently employed in sectors vulnerable to automation should also be allowed to upgrade their training through EI Part II programs.
The federal government should re-establish sectoral partnership tables to help identify and address the needs of workers in different sectors and occupations in the context of technological change driven by AI. These tables can perform active labour market planning and identify training and retraining needs for occupations at risk of automation.

- *How could retraining and upskilling help workers better adapt to changing industry sectors?*

The federal government should enable a structure of worker supports that ensure employer investment in training and retraining opportunities for workers in addition to a strong bedrock of publicly provided programs.

The federal government should incentivize employers to provide digital and AI skills training in the workplace. Employers in Canada spend an estimated $240 per employee annually on training. This is below many other countries in training rates and hours of instruction.[21] With regards to AI, Abacus polling shows that only 36% of employed Canadians state that their employer has encouraged, required, or provided training on using AI tools at work, while new data from a survey through the OBVIA research project in Quebec found that only 25% of workers reported that they had received training on AI applications at work. More than 60% responded that they lacked information on the way AI tools influenced their work tasks or evaluations.[22] The majority of workers are expected to adapt to new AI tools on their own.[23]

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[21] Daniel Munro and Creig Lamb, *Employer-Sponsored Skills Training: A Picture of Skills Training Opportunities Provided by Canadian Employers* (Future Skills Centre, 2023), https://fsc-ccf.ca/projects/employer-sponsored.
[22] V. Pasquier et al., *Résultats Préliminaires Émanant Du Projet «Les Syndicats, Acteurs d'un Futur Du Travail Juste et Responsable»* (n.d.), https://www.obvia.ca/recherche/chantiers/les-syndicats-acteurs-dun-futur-du-travail-juste-et-responsable.
[23] Eddie Sheppard Coletto David, "Are We Ready? Canadians Voice Real Fears About AI and Work," *Abacus Data*, August 1, 2025, https://abacusdata.ca/are-we-ready-canadians-voice-real-fears-about-ai-and-work/.

There are many approaches that could help incentivize employers to provide training, retraining, and reduce barriers for workers to access digital skills and AI training, including requiring large employers to allot a percentage of total payroll per year to training as is required in Quebec[24] or allowing all workers to access EI benefits to upgrade skills and education, particularly workers in at-risk sectors or occupations.

- *Do training programs enhance collective bargaining? If yes, in what ways?*

The Canada Labour Code section 52 should be updated to require employers to negotiate training and retraining programs where jobs will be lost or restructured due to technological change, including AI. This would incentivize a pro-worker approach to AI that augments the capacity of workers to do their jobs well and fosters employer training investments in the workforce. This requirement would help address bargaining impasses in job classifications and industries that have a high risk of automation because workers would have access to guaranteed re-training through their employer.

9. Strengthening protections against misclassification and wage theft while improving timelines for workers' access to their rights

Proactive enforcement of the fundamental principles underlying the concepts of "work," "employee," and "employment" is essential to ensure that workers are paid for all hours worked. At its core, employment is an exchange of labour for wages, and safeguarding this principle as part of employment standards—is critical to preventing wage theft and misclassification. Any reform of the *Code* should be inspired by provincial legislation that includes a clear definition of "work" and "employee", and should specify that all hours worked and/or available for work shall be paid, at the applicable rate of pay. This reform of the *Canada Labour Code* should also include legislative and regulatory changes to end unpaid work for flight attendants and these should be proactively enforced. CUPE advocates for the inclusion of a definition of "work" under the Code's Part III, which states that all hours of work performed by flight attendants shall be paid at their regular rate of pay. Flight attendants are paid on an hourly basis and an amendment to the *Code* should also specify that all hours of work performed by flight attendants shall be paid at their normal rate of pay, or above.

The federal government should also allocate sufficient resources to proactively enforce these core elements of the *Code*, and not rely on self-audit compliance, as it did in the Airline sector, to verify enforcement. Data from jurisdictions which had robust proactive enforcement and later stopped or reduced that proactive enforcement demonstrates that proactive enforcement results in significantly increased compliance with minimum employment standards – particularly in cases of wage theft. Research conducted for the Ontario Changing Workplaces Review showed that 65% to 83% of proactive inspections in each year detected violations and 92% to 99%of

[24] "Contribution to the Workforce Skills Development and Recognition Fund," accessed October 27, 2025, https://www.revenuquebec.ca/en/businesses/source-deductions-and-employer-contributions/calculating-source-deductions-and-contributions/contribution-to-the-workforce-skills-development-and-recognition-fund/.

unpaid wages were recovered through proactive processes.[25] In British Columbia, after proactive investigations were terminated, employee complaints declined by 67%.[26]

Proactive inspections should be increased and targeted at sectors with significant misclassification and wage theft – including the airline industry. The Labour Program's current model of enforcement relies too heavily on individual complaints (for non-unionized employees) and grievance arbitration (for unionized employees). The Labour Program has a duty, consistent with the ILO C081 – Labour Inspection Convention, 1947 (No. 81), to proactively inspect workplaces and enforce minimum standards.

It is not reasonable or effective for enforcement of minimum standards to rest with individual employees who are often in a vulnerable, precarious position and risk reprisal when seeking to enforce their rights.

10. Strengthening workplace health and safety protections, and working on labour mobility to harmonize training standards and regulations

Before addressing specific questions, CUPE notes that modernization of Part II must be guided by the **internal responsibility system (IRS)**. The IRS is the philosophical and operational bedrock of federal health and safety legislation. It holds that while those with control of the workplace must make it safe, the people closest to workplace hazards — workers and their representatives — are best positioned to identify, assess, and control those hazards.

Modernization must strengthen the IRS. The deficiencies identified below arise precisely where it has been weakened, circumvented, or left without adequate enforcement tools.

- *Question 1: Evolution of the Code and Regulations*

Fatigue is an occupational health and safety hazard. It impairs cognitive function, slows reaction time, and increases the risk of both injury and error.

Federally regulated employers — particularly in aviation — routinely mischaracterize fatigue as a scheduling issue to exclude it from the Occupational Health and Safety (OHS) framework entirely: refusing committee discussion, declining to share fatigue data. This is wrong in fact and in law. An employer cannot avoid its duty to control a hazard by locating its source in a management decision.

[25] C. Michael Mitchell and John C. Murray, *The Changing Workplaces Review: An Agenda for Workplace Rights* (2017), https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf.
[26] *Justice Denied: The Systemic Failure to Enforce BC Employment Standards* (BC Employment Standards Coalition, n.d.).

Fatigue is an occupational health and safety hazard. The Transportation Safety Board (TSB) has identified fatigue as a contributing factor or risk in at least 91 transportation investigations since the early 1990s, including 34 in aviation, and has included it on the TSB Watchlist of highest-priority safety issues continuously since 2016.[27]

CUPE recommends:

(a) Amend s. 125(1) to require employers to identify, assess, and control fatigue as part of their hazard prevention program, including maintaining and disclosing fatigue-related data to workplace committees; and

(b) Establish regulatory requirements for controlling hazards related to fatigue, including committee access to scheduling data, fatigue incident reports, and fatigue assessments.

In high-risk sectors such as cash-in-transit operations and police forces, risk assessments are often conducted without meaningful joint participation and without objective oversight.

CUPE recommends that Part II be amended to require objectively conducted risk assessments with equal union and employer participation — including workplace-specific assessments — and that regulations establish national minimum standards governing equipment (vehicles, firearms, armoured protection, communications), PPE (including body armour), staffing levels, crew composition, and on-the-job training.

- *Question 2: Tools and Guidance*

There is no legal requirement for employers to proactively share injury and illness statistics with their committees — including psychological injury data, harassment incidents, or violence reports. Employers hold the data.

Employers routinely refuse to provide this information, often citing privacy concerns for which there is no legal basis where information is presented in aggregate form. CUPE has litigated this and prevailed — and employers continue to refuse[28]. A right that must be repeatedly litigated is not an effective right.
CUPE recommends:

(a) Amend Part II to establish an affirmative employer obligation to compile and present aggregate injury and illness statistics to workplace committees at defined regular intervals, including lost-time injuries, near-misses, psychological injury claims, and harassment and violence incidents, reported in aggregate that protects individual worker privacy;

(b) Explicitly state that there is no legal basis for an employer to withhold required committee information on privacy grounds where information is provided in aggregate form; and

[27] *Fatigue Management in Rail, Marine and Air Transportation*, TSB Watchlist 2025, Watchlist 2018 (Transportation Safety Board of Canada, 2020).
[28] Air Canada v Canadian Union of Public Employees, Airline Division, Air Canada Component (FC 439 2010).

(c) Require the employer to provide its assessment of trends identified in the data and the corrective actions taken or planned in response.

- *Question 3: National Harmonization*

CUPE supports harmonization only where it raises the floor of worker protection, not where it achieves uniformity by levelling down. The goal must be that every worker has access to the most protective standard available.

One specific area that would benefit from harmonization is around protective reassignment. Section 132 of the Code contains a sound triggering mechanism: a pregnant or nursing worker who believes their job poses a risk may cease those functions, consult a healthcare practitioner, and require employer notification to the committee. This should be retained.

CUPE recommends that s. 132 is amended so:

(a) The employer must first attempt to eliminate or modify the hazardous job functions, without reducing the worker's wages or benefits;

(b) Where modification is not practicable, the employer must reassign the worker to suitable alternative work at equivalent pay, with the burden of demonstrating that no suitable alternative exists rests on the employer;

(c) Where alternative work does not exist, the worker is entitled to a preventive withdrawal with full income replacement — not leave without pay — for the duration of the risk period; and

(d) Income replacement must be established directly in the Code, not left to collective agreements, Employment Insurance, or private insurance plans, so that the protection is universal and does not vary by workplace. This protection must be universal — not dependent on collective agreement, EI, or private insurance, like in Québec's legislation[29].

- *Question 4: What advantages do you foresee in adopting a nationally harmonized training framework? What topics would you prioritize?*

CUPE's support for a harmonized training framework is conditional on the same principle that governs our position on regulatory harmonization: the framework must be built to the most protective standard available, not the most convenient common denominator. It must be developed with meaningful and equal worker participation.

- *Additional Concerns: Structural Deficiencies That Generate Formal Labour Disputes and Hazardous Conditions*

[29] Québec, "Act respecting occupational health and safety", Section 40 and following.

The following structural deficiencies within the CODE are active and recurring, documented in complaints currently before federal regulators, and will continue generating grievances, regulatory investigations, and litigation until they are addressed.

The Complaint Process, Undefined Timelines, and Enforcement Failure

These three problems are connected and must be addressed together. The internal complaint process under s. 127.1 was designed to resolve OHS disputes at the workplace level. In practice — particularly in aviation — employers use it as a delay mechanism: dragging out the initial response phase, stalling investigations, and delaying while the worker remains exposed to the hazard. A single unresolved matter generates cascading grievances, regulatory complaints, and litigation.

The mechanism that enables this is a drafting failure. Words like "expeditiously," "as soon as possible," and "without delay" appear throughout Part II but are never defined. There are no deadlines and no automatic escalation triggers. Delay is a viable employer strategy with no regulatory downside.

A compounding structural flaw of the Internal Complaint Resolution Process (ICRP) makes this worse. When a committee-level investigation stalls or reaches impasse, the Code provides no carry-forward mechanism: worker representatives must re-file and re-investigate the non-compliance from the beginning — with the same parties who created the impasse. For safety-critical issues, it means a procedural hazard can persist for months or years not because the matter was never investigated, but because the investigation went nowhere and the process reset to zero. The Code must provide committee members with direct standing to escalate to complaint — without re-filing — where an investigation has been conducted but the matter remains unresolved per the intention of the Code.

When workers escalate to the regulator, Transport Canada (TC) — responsible for Part II enforcement in aviation under a Memorandum of Understanding (MOU) with ESDC — enforcement is slow, inconsistent, and frequently inadequate. Complaints go unanswered. Investigations are conducted without interviewing the workers who filed them. In one documented case, TC intervened to end an ongoing ESDC investigation before orders could be issued. TC inspectors are accustomed to operating through the Safety Management System framework in the Canadian Aviation Regulations which is a management-driven model that is being applied, inappropriately, to Code complaints. The result: aviation workers have fewer enforced rights than workers where ESDC enforces directly.

CUPE recommends to:

(a) Amend s. 127.1 to establish defined, mandatory timelines for each stage of the ICRP, including a specific deadline for the employer's initial response to a complaint notification;

(b) Provide that failure to meet any defined timeline automatically triggers the worker's right to escalate the complaint to the Head of Compliance, without requiring any additional step by the worker; and

(c) Establish meaningful consequences — including administrative monetary penalties — for employers who fail to meet ICRP timelines;

(d) Terminate the MOU between the Labour Program and Transport Canada for Part II enforcement and return direct enforcement responsibility to ESDC.

11. Extending successor rights in cases of contract retendering

CUPE supports extending successor rights to contract retendering across all federally regulated workplaces. The current framework leaves a serious gap in labour relations protection. When a service contract changes hands, workers may continue doing the same work, at the same location, for the same client or end user, but lose the benefit of union representation, collective agreement protections, job security, seniority, grievance rights, and negotiated working conditions that were hard-fought.

The Code already recognizes the problem in a limited way. Subsection 47.3(2) protects equal remuneration in certain retendering situations, and Part III protects continuity of employment for labour standards purposes where an employer changes because of retendering. Those are useful but incomplete protections. A wage floor and continuity for minimum standards do not preserve collective bargaining rights. They do not preserve the collective agreement. They do not prevent contract flipping from being used to reset working conditions and undermine unionized work.

Contract retendering should not be a means to strip workers of collective bargaining rights. A clear federal successor rights regime would protect workers, promote stable labour relations, reduce litigation, and prevent contract flipping from being used to undermine unionized work.

- *Is CUPE's sector affected by contract retendering? If so, in what ways?*

CUPE members work in sectors where services may be contracted out, retendered, transferred, reorganized, or moved between providers. In practice, contract retendering can have the same effect as a sale or transfer of a business: substantially similar work continues, but under a different employer.

Without successor rights, this creates instability for workers and unions. Contract retendering can result in:

- loss of bargaining rights;
- termination or displacement of existing employees;
- loss of collective agreement protections;
- downward pressure on wages and benefits;
- loss of seniority and job security;
- fragmentation of bargaining units;
- avoidable litigation over whether any statutory protection applies; and
- incentives for employers or contracting authorities to use retendering to reduce labour costs.

This is especially harmful in lower-wage and vulnerable sectors where workers may have little practical ability to resist a change in contractor. It also undermines stable labour relations. Workers who have democratically chosen union representation should not lose those rights because the contracting structure changes while the work continues.

- *What are the benefits or challenges of extending successor rights in cases of contract retendering?*

The main benefit is stability. Successor rights would preserve bargaining rights and collective agreement protections where substantially similar services continue under a new contractor.

A successor rights regime would also reduce incentives to use contract retendering as a tool to defeat collective bargaining. The purpose of retendering should be service delivery, not the elimination of union rights or negotiated working conditions.

CUPE submits that extending successor rights would:

- protect workers' democratic choice to unionize;
- preserve collective bargaining relationships;
- prevent wage suppression through contract flipping;
- reduce disputes about whether workers must start over with a new employer;
- promote labour relations continuity for employers, unions, workers, and service users;
- discourage artificial restructuring designed to avoid collective agreements; and
- provide clearer rules for employers bidding on contracts.

There may be implementation issues, especially where more than one contractor takes over the work, or where bargaining units are merged, split, or partially transferred. Those challenges are a reason to legislate a clear, robust process.

Ontario and British Columbia provide useful models. Ontario deems a sale of business to have occurred for certain building services where employees perform services at premises that are their principal place of work, the employer ceases to provide those services, and substantially similar services are later provided at the premises under another employer (section 69.1). British Columbia applies successorship protections to retendering in specified services, including building cleaning, security, bus transportation, food services, non-clinical services in the health care sector, and other services designated by regulation (section 35).

Those examples show that successor rights in retendering are workable. They also show that legislatures have recognized the need to move beyond the narrow common law concept of a sale of business. Where the work continues, the workers' collective rights should continue.

CUPE further submits that the federal government should consider a broader transition framework for more complex reorganizations. Ontario's *Public Sector Labour Relations Transition Act, 1997* offers one example of a statutory model that avoids forcing unions and employers into repeated case-by-case litigation. It provides mechanisms for determining bargaining unit structure, preserving collective agreements during transition, addressing representation issues, and dovetailing seniority. A federal successorship regime (including but

not limited to contract re-tendering) should be similarly clear, practical, and aimed at the protection of workers' rights.

- *Should successor rights be extended across all federally regulated workplaces or only certain sectors, like airports?*

Successor rights should be extended across all federally regulated workplaces.

A sector-by-sector approach would leave workers exposed in any sector not named in the legislation. It would also invite disputes about whether a workplace falls inside or outside a protected category. The problem is not limited to airports. The problem arises whenever substantially similar services continue under a new contractor and workers' collective rights are put at risk because the contract has changed hands.

At minimum, the legislation should protect all service contract retendering in federally regulated sectors. The better approach is to enact a broad rule: where an employer ceases to provide services, in whole or in part, and substantially similar services are subsequently provided by another employer for the same client, at the same premises, or as part of the same continuing operation, successor rights should apply.

The legislation should not depend on whether the transaction fits a traditional sale, lease, transfer, or disposition of a business. Contract retendering is often structured precisely to avoid those categories. The Code should look at the substance of the arrangement: whether the work continues and whether the workers' collective bargaining rights would otherwise be lost.

- *Are there any other issues you would like to raise regarding cases of contract retendering?*

CUPE recommends that any amendment include the following features:

(a) The Code should deem a successor employer relationship where substantially similar services continue after retendering. The test should be practical and purposive. It should focus on continuity of work, continuity of service, the location or client served, and whether the new contractor performs all or part of the prior work.

(b) Successor rights should preserve both bargaining rights and the collective agreement. Workers should not be left with only equal remuneration protection. Rates of pay, benefits, seniority, grievance rights, job posting rights, layoff and recall protections, and other negotiated terms should continue unless and until changed through lawful collective bargaining.

(c) The regime should address partial transfers and multiple successor employers. A contracting authority may split work between multiple contractors or move only part of a service. The legislation should prevent rights from disappearing because the work is divided.

(d) Seniority should be protected. Where workers continue in substantially similar work, their service and seniority should not be erased. In more complex transitions, the legislation should provide for dovetailing of seniority based on a common definition.

(e) The legislation should include an efficient dispute-resolution process. Workers and unions should not have to relitigate basic successorship questions every time a service contract changes hands. The Canada Industrial Relations Board should have clear authority to make timely orders preserving bargaining rights, collective agreements, bargaining unit structures, and employee protections during transition.

(f) The Code should prevent contracting practices designed to avoid successor rights. The legislation should apply whether the retendering is direct or indirect, whether the work is transferred in whole or in part, and whether the new provider is selected through a formal tender, request for proposals, subcontracting arrangement, or other contracting mechanism.

(g) The federal regime should be at least as protective as the strongest provincial models. Workers in federally regulated workplaces should not have weaker protection than workers covered by provincial successor rights regimes for contract retendering.

12. Sustaining the Wage Earner Protection Program

The Wage Earner Protection Program (WEPP) was put in place to provide workers with a fund to pay a portion of the unpaid wages owed to them if their employer becomes insolvent. This fund has been important for workers who will lose their jobs due to an insolvency.

CUPE opposes any new proposed regulations which may delay workers' payments through the WEPP program. If the federal government is concerned that wages were paid improperly, it is up to the federal government to pursue the matter without interfering in workers' access to WEPP funds.

13. Other potential changes to the Code that could help strengthen labour relations and supports for workers

- *Are there other potential changes that you would like to propose that could help strengthen labour relations and supports for workers?*
- CUPE is of the opinion that the provisions in the *Canada Labour Code* prohibiting the use of replacement workers should be strengthened to better support workers during a strike or lockout (see full answer below). *Are there gaps, emerging issues, or outdated provisions in the current federal labour relations framework that warrant consideration or modernization?*

There are significant gaps in the new anti-replacement worker provisions in the *Canada Labour Code* that must be addressed with regard to workplace, labour-replacing technologies, and burden of proof.

These provisions came into force on June 20, 2025, following the adoption of Bill C-58.[30] They ban employers from using several types of people as replacement workers,[31] including employees hired after the day on which notice to bargain collectively is given as well as employees who normally work at another of the employer's workplaces or who are transferred to the workplace at which a strike or lockout is taking place after this notice is given.[32]

Workplace

In a recent decision [*Canadian Union of Public Employees Local 4317 v. Montreal Gateway Terminals Partnership, 2026 CIRB 1225*], the Canada Industrial Relations Board (CIRB) determined that the workplace was the physical address where the striking employees normally performed their work. Therefore, according to the CIRB, an employer may use any employees hired prior to the day on which notice to bargain collectively is given to replace strikers, even if they normally work on different floors or in different workspaces at the same address.[33]

This interpretation of "workplace" bestows a clear economic advantage on employers with operations spread across a vast site with a single address, which is the case for a large number of federally regulated employers (office towers, port facilities, airports, railways, etc.). This power imbalance has the potential to unduly prolong a strike or lockout, which is precisely what happened with CUPE members working for Montreal Gateway Terminals who were on strike for five months at the Port of Montreal in 2025–2026.

Another CUPE local representing the flight attendants at Pascan Aviation, a regional air carrier in Quebec, is currently on strike and has been for over six months. The employer has been using other staff members working at the Saint-Hubert Airport—including pilots, security guards, office workers, and ramp agents— to replace striking employees.

The financial pressures faced by Pascan Aviation are so minor that a bargaining date has still not been set several months in, and the employer is in no hurry to resume talks.

As we stated in 2023,[34] a replacement worker should be understood as anyone who performs all or part of the duties of an employee in the bargaining unit on strike or lockout, i.e., work that, but for the strike or lockout, would have been performed by a bargaining unit member who is striking or locked out.

No one else—regardless of where they are located—should be permitted to perform these duties.

The *Code* must also recognize that some jobs can also be performed at multiple locations, be they physical (dock/warehouse, airplane/airport, etc.) or virtual (telework).[35]

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[30] House of Commons of Canada, Bill C-58: *An Act to amend the Canada Labour Code and the Industrial Relations Board Regulations*, May 27, 2024.

[31] *Canada Labour Code* (R.S.C., 1985, c. L-2), subsection 94(4) et seq.

[32] *Canada Labour Code* (R.S.C., 1985, c. L-2), subsections 94(4)(a) and (c).

[33] CIRB, *Canadian Union of Public Employees Local 4317 v. Montreal Gateway Terminals Partnership*, 2026 CIRB 1225, paras. 57 and 61.

[34] CUPE, *Submission to Employment and Social Development Canada*, January 31, 2023, p. 9.

[35] The COVID-19 pandemic showed that nearly 40% of jobs in Canada can plausibly be carried out remotely. See Statistics Canada, *Running the economy remotely: Potential for working from home during and after COVID-19*, May 28, 2020.

Replacement work

Finally, the ban on replacement workers must also be extended to include all technological means that may substitute for labour—including AI systems—during a legally permissible strike or lockout in order to preserve workers' bargaining power and protect their right to strike.

Amending the anti-replacement worker provisions in the *Code* to incorporate these recommendations would help ensure all parties negotiate in good faith and in a timely manner to minimize their losses and restore industrial peace.

Burden of proof

The recent strike at Montreal Gateway Terminals confirmed how difficult it can be for any union to prove that an employer has used replacement workers.

The above-cited CIRB decision nevertheless emphasizes that "the Code does not provide for a reversal of the burden of proof for complaints alleging a violation of subsection 94(4), unlike complaints alleging a violation of subsection 94(3), as stipulated in subsection 98(4).[36]"

Simply adding a reference to subsection 94(4) in subsection 98(4) would help restore the balance of power between the parties by resolving the inconsistent phrasing that puts the union at a disadvantage in terms of enforcing its rights relating to the ban on replacement workers.

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[36] CIRB, Canadian Union of Public Employees Local 4317 v. Montreal Gateway Terminals Partnership, 2026 CIRB 1225, January 23, 2026, para. 45. [unofficial translation]