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 – Targeted second phase

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INTRODUCTION

This submission is in response to the Federal government's targeted second phase 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 July 3, 2026, which raises a second round of significant 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 once more on how the federal labour relations framework could be improved and how labour rights can be advanced in the federal jurisdiction. However, this is yet another rushed consultation process on the Canada Labour Code. 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. The initial consultation covered thirteen different areas. The most recent consultation includes seven additional topics. Issues related to grievance arbitrations, bad faith bargaining, strike and lockout mandates, first collective agreements, medical leave, and wage theft require thoughtful consideration and substantial analysis. Federally regulated workers in all sectors deserve to have a say on these matters, and unions, including CUPE, need time to meaningfully engage our members. Thirty days is a woefully insufficient amount of time to do this.

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 who are part of our movement.

RESPONSE TO REVIEW QUESTIONS

1. Reviewing section 107

- *The consideration of industrial peace is already included in section 107. Should there be further guiding principles governing the use of section 107? If so, what would these further guidelines look like?*

Competing interests and power imbalances lie at the heart of employer-worker relationships. Balancing these competing interests with an eye to redressing power imbalances is a key pillar of the Canadian model of industrial relations. CUPE's position is that because section 107 has been used to prevent or end strikes, its mere existence has a corrosive effect on the collective bargaining system. Any use of section 107 represents a serious and substantial attack on the right of workers to free collective bargaining and the right to strike.

Insofar as section 107 is intended to protect "industrial peace", it is a tool that is patently not suited to this purpose. On its face, section 107 now undermines industrial peace by corroding the bedrock of relatively peaceful industrial relations: the free and fair collective bargaining system. 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."[1] The functionally arbitrary powers granted to the sitting Minister enable the Government to put their thumb on the proverbial scales in a draconian manner that inevitably favours employers.

Repeated interventions by the federal government in what ought to be free and fair collective bargaining using section 107 – including in rail, at the ports, at Canada Post, and in the airline industry, – has poisoned the collective bargaining process and left the ability of workers to exercise a constitutionally protected right subject to political whims and pressure by business groups and other lobbyists. 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.

The degenerating impacts of frequent invocations of section 107 have only made strikes and lockouts more bitter and more polarized when they happen, as was noted in the 2025 Industrial Inquiry Commission on West Coast Ports.[2] Jurisprudence has also 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.[3]

Further, CUPE members and workers across Canada have demonstrated that they view the right and ability to strike as fundamental to their collective interests, regardless of whether the sitting government is willing to respect that right. The Government should remain mindful that the outcome of attempts to restrict the right to strike is not the absence of industrial unrest but, rather, disputes between workers and employers becoming more unpredictable and spiralling into wider social conflicts. Jurisdictions with more restrictive and draconian labour laws generally have more disruptive, violent, and intransigent industrial relations, not more peaceful or productive ones.

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

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

[3] 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 2 was a party.

Canada uses back-to-work orders and legislation more than any other G7 country. Canada 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 and 2019.[4] 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.[5]

- *Could such guiding principles include considerations such as the broader public interest (e.g., the magnitude of economic or social impacts), the input of an independent assessment or reporting to the public about an impasse/breakdown of negotiations despite all available mediation efforts, or the length of time of a dispute?*

The only other labour legislation in Canada that makes specific reference to the "public interest" is the *Federal Public Sector Labour Relations Act (FPSLRA)*. In the FPSLRA, a Public Interest Commission acts as an additional step in conciliation, and in some circumstances limits the scope of bargaining or interest arbitration, excluding certain matters (especially staffing levels and the organization of work) from negotiations. The experience of unions in the federal public service is that this Commission creates absurd delays and erodes the effectiveness of the collective bargaining process. CUPE is opposed to "public interest" bodies that would limit the scope of bargaining or make determinations that would delay or further restrict the right to strike.

The *Code's* current provisions (apart from section 107, which is excessive) already adequately addresses public-interest concerns in the form of immediate social impacts through the Maintenance of Activities regime for industries that may be considered essential. The Maintenance of Activities regime is in line with International Labour Organization (ILO) Conventions, which represent the tripartite social consensus on labour standards, meaning they are developed based on consensus between labour and employer organizations and signatory countries (including Canada).

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)"[6] – this includes economic sectors that are integral to supply chains and the movement of goods, such as ports and railways. Canadian jurisprudence, notably the 2015 Supreme Court ruling in *Saskatchewan Federation of Labour v. Saskatchewan* 2015 SCC 4,[7] has also upheld the right to strike as constitutionally protected. The Government should proceed with caution when considering changes to the *Code.* Any amendment that would infringe on fundamental rights and standards will be challenged as unconstitutional.

The ILO makes 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 many industries in the federal

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[4] Evans et al., Ibid.

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

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

[7] Saskatchewan Federation of Labour V. Saskatchewan. Supreme Court of Canada. January 30, 2015. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do

jurisdiction, the right to strike should not be restricted.[8] The ILO standard is not inconvenience, economic loss, public pressure, or disruption but strictly “the existence of a clear and imminent threat to the life, safety or health of the whole or part of the population. Any further restrictions on the right to strike (a right that is already relatively limited in Canada compared to other jurisdictions[9]) in the “public interest” would be an egregious departure from both Canadian jurisprudence and international norms and standards that would prompt near-universal condemnation from Canadian and international civil society and organized labour.

- *Should clarity or further definition be given to "industrial peace” as it is currently included in the Code? If so, what would that look like?*

As mentioned above, since it has been used to end and prevent strikes, there is no longer any effective use of section 107. Its mere existence has a corrosive effect on collective bargaining and is therefore contrary to the aim of promoting genuine industrial peace. Providing a new definition of “industrial peace” would not alter or alleviate this. In fact, it would further create uncertainty and unpredictability at the bargaining table, and foster litigation instead of good faith bargaining. CUPE sees this, as with the consideration of “public interest” language in guiding the use of section 107, as merely creating pretexts for unreasonably restricting free collective bargaining and the right to strike. This does not align with the Canadian industrial relations system or jurisprudence and would place Canada further out of step with international, tripartite norms and standards.

- *Please identify any tools that aim to accomplish the objective of maintaining industrial peace as an alternative to the kind of powers contained in section 107 of the Code? Are there examples from other jurisdictions?*

CUPE has already provided detailed recommendations for strengthening and improving the *Code* in our submission to the most recent round of consultations, dated May 22, 2026. By way of example, we noted that section 105 of the *Code* establishes ministerial authorities for conciliation or mediation, but that these powers could be strengthened to compel disclosure or testimony from the parties where conventional conciliation-mediation has been exhausted in order to promote more productive negotiations, provided this form of investigation does not lengthen bargaining timelines. We also suggested creating more opportunities to bargain by shortening the 21-day “cooling off” period to align with other jurisdictions in Canada.

It is CUPE’s view that voluntary mediation and supports for free and fair collective bargaining are the best tools in assisting parties in resolving disputes. The vast majority (95%) of collective agreement negotiations in the federal jurisdiction concludes without resort to strike or lockout, proving that free and fair collective bargaining works both to produce the timely conclusion of collective bargaining and the promotion of industrial peace.

[8] Gernigon, B., Odero, A., & Guido, H. (2000). ILO principles concerning the right to strike. International Labour Office.
[9] EPSU, “Right to Strike Country Fact Sheets” European Public Services Union, 2021. https://www.epsu.org/article/right-strike-country-factsheets

2. Expedited grievance arbitration

- *What are the primary structural or behavioural drivers of grievance delays (e.g., volume, complexity, incentives, resourcing, decision-making practices), and how do these factors interact?*

Grievance arbitration remains central to industrial justice and the Canadian industrial relations system, but its effectiveness has been undermined by unreasonable delays, high costs, and the increased legalism which renders the process inaccessible to workers. Expedited arbitration can be helpful if it is targeted and designed to restore grievance arbitration's core function and purpose: timely, fair, expert, accessible workplace justice.

Backlogs damage labour relations as workers wait for remedies, disputes linger into bargaining, and unresolved conflicts can harden into mutual distrust between parties. Former Chief Justice for the Ontario Court of Appeal Warren Winkler notes that "a backlog of disputes can lead to a dysfunctional relationship."[10] 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 grievance arbitration has become more legalistic and as a result "costly, cumbersome and delay ridden."[11] Modern cases can touch on multiple areas of law, and not just industrial relations, such as human rights and health and safety. Proceedings may rely on complex evidence and electronic disclosure. This has contributed to the grievance arbitration process being unwieldy and often inaccessible for workers that perceive the system as being too complex.

In addition to this added complexity, CUPE identified several contributing factors to delays in grievance arbitration in our submission to the most recent round of consultations, dated May 22, 2026. Limited availability of arbitrators is a factor. Delays can be driven by frivolous and unnecessary procedural disputes, often coming from the employer side as a tactic to frustrate legitimate grievances. This spills over into the arbitration process itself, with disclosure and preliminary disputes unresolved at the date of hearing.

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.

- *Are there specific models or practices from provincial jurisdictions (e.g., British Columbia, Ontario) or other comparable labour relations systems that have been effective in reducing grievance backlogs between the unions and their respective employers? What elements of those models would be most valuable to replicate or adapt in the federal context?*

Former Chief Justice Winkler noted several expedited systems (e.g., Canada Post and Ontario's electricity sector) helped reduce backlogs; CUPE has experience with similar approaches, such

[10] 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/
[11] 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/

as in its agreement with Air Canada. A federal approach to expedited grievance arbitration could 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.

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. Routine scheduling, pay, posting, suspension, or narrow interpretation grievances might be appropriate for expedited grievance arbitration, whereas discharge or serious rights-based or systemic matters should be treated with appropriate weight and consideration. CUPE thus recommends that any expedited grievance arbitration framework should have a suitability screen: expedited arbitration should be presumptively available for routine, lower-complexity matters, but not have automatic application to serious rights-based or systemic disputes unless the parties agree. There should also be a pathway for arbitrators to convert an expedited grievance arbitration to a fuller process where the evidence or nature of the case makes it necessary.

- *How can expedited arbitration mechanisms be designed to complement—not displace—existing grievance procedures in collective agreements, while still ensuring efficiency and consistency across workplaces?*

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 grievance arbitration model.

Where the parties have already agreed to an expedited grievance process in their collective agreement, its terms should prevail and any provisions under the *Code* ought to be complementary. A statutory expedited grievance arbitration process would mainly be beneficial to workers in the federal jurisdiction who do not have expedited grievance resolution methods already in their collective agreements. An expedited grievance process in the *Code* may also help alleviate problems with employers who frustrate the normal grievance process by refusing to abide according to the collective agreement timelines, along with creating a new means by which the union could voluntarily seek intervention to speed up the resolution of grievances.

3. Addressing bad faith bargaining

- *How can the Government help proactively address bad faith bargaining? Are there ways to further clarify or strengthen provisions in the Code in this regard?*

Section 107 now acts as an incentive for employers to avoid bargaining in good faith. The threat of a strike is the primary leverage that unions have in bargaining in order to reach deals. When that leverage is removed by section 107 because employers believe that the government may intervene and suppress the right to strike, employers have little incentive to bargain in good faith.

Removing this incentive to bargain in bad faith would be the best way to support good faith bargaining.

- *How can the Government help address concerns about bad faith bargaining, including frivolous and/or vexatious complaints?*

An additional tool that could help address concerns about bad faith bargaining is ensuring that the Canada Industrial Relations Board (CIRB) has the resources to process and hear bargaining in bad faith complaints, and order meaningful remedies in an expeditious manner.

Where a hearing and remedy cannot be achieved without undue delay to the bargaining process, filing a complaint has limited impact because the trade-off for obtaining a remedy requires delaying reaching a deal for months or years. Delay often means that a meaningful remedy is no longer possible and creates a situation where there is often no meaningful remedy for bargaining in bad faith that falls short of total refusal to reach a collective agreement.

In recent years, the average processing time for complaints filed with the CIRB has almost doubled from 212 days in 2020-2021 to 416 days in 2024-2025.[12] While complaints under Part 1 of the *Code* are processed slightly more quickly than some other types of complaints, the total time and the rate of increase are particularly concerning. The processing time for complaints filed under Part 1 of the *Code* increased from 296 to 377 days or by 27% from 2023-2024 to 2024-2025.[13]

CUPE has experienced frivolous bad-faith bargaining complaints filed by employers as a tactic to delay negotiations or avoid bargaining in good faith, while creating an opportunity to lobby for government intervention. Imposing fines for frivolous complaints would be counterproductive, as it would generate additional litigation instead of having the parties focus on bargaining.
The most effective way to discourage these delaying tactics is to eliminate the possibility of government intervention that incentivizes them. Moreover, there is no evidence that unions are filing frivolous or vexatious bad-faith bargaining complaints.

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[12] CIRB Annual Report 2024-2025, https://www.cirb-ccri.gc.ca/en/about-us/annual-report-2024-25
[13] Separate data for complaints under Part 1 is not available in the CIRB annual reports prior to 2023-2024.
CIRB Annual Report 2023-2024, https://www.cirb-ccri.gc.ca/en/about-us/annual-report-2023-24
CIRB Annual Report 2024-2025, https://www.cirb-ccri.gc.ca/en/about-us/annual-report-2024-25

- *What has your experience been like with bad faith bargaining issues? How often are these issues referred to the CIRB?*

CUPE's experience is that the possibility of government intervention incentivizes employers to bargain in bad faith. Where it is available, employers have no incentive to reach a deal at the table because the potential benefit of government interference is so large. As long as section 107 exists, there is no meaningful remedy available through a complaint to the CIRB when bargaining in bad faith is motivated by the possibility of government intervention.

Additionally, the increasing time for complaints to be adjudicated impacts how and when complaints are filed with the CIRB. The ability to prioritize urgent complaints is not sufficient. Further resources to ensure timely adjudication of bargaining in bad faith complaints would promote timely remedies, resolution, and the filing of only fulsome complaints that are particularized and focussed. This is because where adjudication is delayed, the parties do not need to turn their minds to the merits and key issues until later in the process.

- *Could financial penalties or fines be an effective mechanism to address bad faith bargaining including frivolous or vexatious complaints? If so, how should such measures be designed and implemented to ensure fairness, proportionality, and effectiveness?*

The CIRB currently has both specific remedial powers for bad faith bargaining under section 99(1)(b.1) of the *Code*, which include the ability to require a party insert or withdraw specific terms and if necessary, to direct a binding method of resolving those terms and broad remedial powers pursuant to section 99(2) of the *Code*.

The CIRB's powers, while broad, are restricted to remedying the breach and do not allow for punitive remedies or fines.

The introduction of fines or penalties is not a remedy that is likely to deter bad faith bargaining while the carrot of possible invocation of section 107 remains available to employers. The costs saved over the life of a collective agreement are far more significant than the risk of any fine or penalty. In that context, employers would likely accept the risk of a fine or penalty.

On the other hand, introducing a fine or penalty for "frivolous or vexatious" bargaining in bad faith complaints could have a chilling effect on meritorious bargaining in bad faith complaints and will further legalize the bargaining process.

Recent annual reports of the CIRB confirm that the most common unfair labour practice complaints received by the Board are duty of fair representation complaint, not bargaining in bad faith complaints. Bargaining in bad faith complaints are not even numerous enough to warrant tracking these separately from other unfair labour practice complaints, never mind warranting a special process or deterrent by way of fine.

Further, the CIRB already has a process to deal with frivolous and vexatious complaints. Section 16 (m.2) allows the CIRB to make any order or give any direction necessary to prevent an abuse of process. Section 16 (o.1) allows the CIRB to summarily dismiss a complaint, and section 16.1 allows the CIRB to decide any matter without holding an oral hearing.

The fact that there are no decisions from the CIRB even considering requests to summarily dismiss complaints on the basis that they are frivolous and vexatious suggests that there is no actual problem of frivolous and vexatious complaints. Employers are attempting to distract from the very real bargaining in bad faith incentives created by the availability of section 107 by suggesting there is an equivalent problem with frivolous and vexatious complaints filed by bargaining agents. We reject this attempt at creating a false equivalence.

4. Length of a strike or lockout mandate

- *What are the advantages or disadvantages of the current 60-day validity period of a strike mandate?*

The federal jurisdiction has an extremely short validity period of a strike mandate when compared with other jurisdictions in Canada. The strike mandate in many jurisdictions remains valid throughout the bargaining cycle while those with fixed terms are longer than those found in the *Code* (3 months in British Columbia and 120 days in Alberta).

The advantage of a longer validity period would be that unions would not have to engage in additional strike votes when union members have already expressed their position on strike action.

Any support for a longer strike vote validity period should not be taken to be in favour of longer collective bargaining timelines. As stated in our submission to the first phase of the *Canada Labour Code* review, CUPE is against any additional extensions to the collective bargaining process that currently exist in the *Code*.

- *In your view, should the length of the strike mandate, once obtained, be extended or remain valid for the duration of the collective bargaining cycle?*

The *Code* should be modified so that a strike mandate remains valid for the duration of the collective bargaining cycle. At a minimum, the validity period should be extended to 3-4 months rather than the 60 days currently found in the *Code*.

- *Should the length of a lockout mandate, once obtained by employers' organizations, be extended or remain valid until a new collective agreement is reached?*

Lockout mandates do not tend to require the same level of organization and energy as strike votes. In many cases, an individual within an employer organization can determine the lockout mandate by themselves. Given this context, the 60-day validity period should continue to apply for employers.

5. First collective agreements

- *To what extent would mandatory early involvement of the Federal Mediation and Conciliation Service (FMCS) improve the timeliness and quality of first collective agreement negotiations, and under what conditions would this intervention be most effective? Please provide examples from your experience.*

It is CUPE's view that voluntary mediation and supports for free and fair collective bargaining are the best tools in assisting parties in resolving disputes. Most parties will have gone through the prescribed bargaining process, which includes conciliation, before the Minister's help is invoked to settle a first collective agreement. For those rare cases where the employer refuses to recognize the bargaining agent and does not engage in bargaining, conciliation/mediation services can be offered on a voluntary basis.

- *What additional tools or mechanisms—beyond mediation (e.g., relationship building supports)—would most effectively help parties overcome impasses and establish constructive labour-management relationships in first agreement negotiations?*

Accessing first contract arbitration in the federal sector relies on a ministerial order, which creates a barrier to accessing this tool that can provide stability for newly negotiated units. CUPE recommends that the *Code* be amended to provide the CIRB with broad powers to assist with first contract negotiations and for unions to have automatic access to first contract arbitration if those earlier interventions, such as enhanced mediation are unsuccessful. At minimum, the CLC should be amended to remove the need for referral by the Minister, allowing unions to apply directly to the CIRB for access to first contract arbitration.

Currently, a first agreement settled by the Board will be effective for a period of two years. This term should be reviewed downward. By settling a shorter agreement, the Board sets up the parties to meet sooner and achieve a second collective agreement that is negotiated, which is the best outcome for the parties.

Six provinces settle shorter terms when arbitrating first contracts. Newfoundland and Labrador, New Brunswick and Alberta settle agreements for a year and a half, while Nova Scotia, Prince Edward Island and Manitoba settle agreements for one year.

Another tool that could be added to the *Code* is an order of proceeding provision. This provision would mandate the Board to settle a first contract collective agreement dispute before considering decertification/revocation of certification or displacement applications. The goal of first contract arbitration is to facilitate reaching a collective agreement and create stable bargaining relationships. Allowing decertification and displacement applications to proceed while the Board is considering settling a first collective agreement undermines the purpose of this provision.

Both Ontario and Prince Edward Island have provisions that set out this order of proceeding.

6. Medical leave with pay

The pandemic situation we experienced over the past few years has highlighted the importance of having regular access to sick leave to prevent the spread of infectious and contagious diseases.

In this context, federally regulated private sector employees have access to up to ten (10) days of paid sick leave, which is extremely important to stop the spread of disease. A person who does not have access to sick leave is more inclined to attend the workplace even when they are sick, which can increase the risk of infection for their colleagues, and ultimately cause a loss of productivity in the workplace.[14]

[14] The CMA is calling for the elimination of medical certificate requirements or doctors' notes for minor health problems of short duration, Canadian Medical Association, page 6.

It is rather shocking to see employers demand more leeway in requiring medical certificates or doctor's notes. In fact, the medical field in Canada has long maintained the position that the requirement of medical certificates should be reduced or even eliminated.

At the federal level, the Canadian Medical Association,[15], the Canadian Association of Emergency Physicians,[16], the College of Family Physicians of Canada,[17] and the Canadian Nurses Association,[18] have all taken a position on the matter, stating that the administrative burden of medical certificates needs to be reduced.

At the provincial level, the Association of Doctors of BC [19] (British Columbia), Doctors Manitoba[20] (Manitoba), Ontario College of Family Physicians (Ontario)[21] and the Collège des Médecins du Québec (Québec), [22] have all firmly denounced the practice of demanding doctor's notes as ineffective and preventing them from concentrating on their primary mandate of offering health care services.

The effects of medical certificates are numerous and well documented. They have repercussions for clients, for health care providers, for the health care system and for workplaces. [23] For this reason, requiring them should be cut back. Increasing this requirement is counterproductive and imposes an unnecessary burden on the health care system when resources are already sorely lacking.

Furthermore, we should note that several provinces have adopted changes to their labour standards to reduce the number of medical certificates, including Québec, [24] British Columbia, [25], Ontario[26], Nova Scotia[27] and Saskatchewan.[28]. The federal government should follow the logic of these provinces and refrain from imposing new requirements for medical certificates.

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15 Ibid, note 1.
16 CAEP Position Statement – Sick notes for minor illness, Canadian Association of Emergency Physicians, 2020
17 Pre-budget Consultations – 2022 Budget, College of Family Physicians of Canada.
18 Strategic recommendations on health care human resources – Summary, College of Family Physicians of Canada, Canadian Nurses Association and Canadian Medical Association, April 14, 2022.
19 Physician Burdens, Doctors of BC, 2025
20 Guidance for Employers & Organizations – Eliminating Sick Notes for Short-Term Absence Verification, Doctors Manitoba, 16 juin 2025
21 Did you know that most employers in Ontario have eliminated the requirement for sick notes for short-term illnesses? Ontario College of Family Physicians
22 Brief on Bill 68, Collège des Médecins du Québec (Quebec Medical Association), September 2024.
23 Ibid, note 5.
24 Legislation with the primary aim of reducing the administrative burden of doctors, Bill 68.
25 Bill 11 – Employment Standards Amendment Act, 2025.
26 An Act to amend various statutes with respect to employment and labour and other matters, October 28, 2024.
27 An Act to Reduce Administrative Barriers to the Provision of Health Care, Chapter 3, 2023
28 Amendments to the *Saskatchewan Employment Act*, December 2024

- *Should employers have greater flexibility to request a medical certificate from employees who take paid medical leave? If so, under what conditions?*

CUPE shares the view of many professional associations in the health care system that have taken the position that the circumstances under which an employer can demand a medical certificate should not be expanded. As mentioned earlier, a medical certificate is generally not beneficial to the workplace nor to public health.

In fact, to name just a few, medical certificates create the risk of harm to others, tie up the health care system, exacerbate health inequalities, and overtax health care resources, while reducing the availability of doctors. Their impact on the workplace is also tangible: medical certificates are not an effective method to prevent absenteeism, and they reduce productivity because requiring employees to justify their absences forces some workers to go to work while being sick.[29].

The *Canada Labour Code* should not therefore be modified to allow employers to more regularly demand that absences due to illness be justified in this way. In fact, the requirement to justify absences starting from the fifth day of absence is in keeping with the average requirement for provincial labour standards which were recently reformed.

- *Instead of a medical certificate, should employers be allowed to request that an employee provide a signed attestation that they qualified for medical leave? Why or why not?*

The attestations requested by employers should not include the requirement to justify an absence by obtaining the signature of a staff member or medical personnel from a health care establishment. The administrative burden of attestations is not only born by doctors, but by all personnel in the health care system.

As for the question of a declaration signed by the employee (self-certification), CUPE believes it would serve no purpose to demand such a declaration from workers. In fact, employers already have the tools they need to discipline an employee who gives false statements about the reason for their absence. This type of declaration would in no way change the investigative work required of the employer to decide whether any disciplinary measures are appropriate, and in proportion with any wrong committed, if applicable.

Moreover, increasing the number of attestations would have the same effect as increasing the number of medical certificates in the workplace. In fact, the attestation could have a dissuasive effect on some workers, who would then decide to attend the workplace even if they are sick. A sick person is likely to infect other colleagues, while reducing productivity and increasing the likelihood of committing errors in their work.

[29] Ibid, note 1

- *Subsection 168(1.1) of the Code currently provides that certain divisions under Part III (Minimum Wage and Age of Employment, Annual Vacations, General Holidays, and Bereavement Leave) do not apply to employees represented by a union, if the collective agreement provides rights and benefits at least as favourable as those provided in those divisions. Do you believe that medical leave provisions should be treated in the same manner?*

Arbitration tribunals that have been called upon to rule on paragraph 168(1.1) summarize the test they apply as follows:

"... I conclude that I should apply the approach the Court enunciated in Re Queens University and Fraser et al. (supra) and compare the totality of the rights and benefits relating to the holidays that the collective agreement confers on bargaining unit employees with the rights and benefits relating to the holidays conferred on bargaining unit employees under the *Code* by placing in one pan of a metaphorical scale, the totality of rights and benefits for 12 holidays...

...In section 168(1.1) of the *Code*, Division V (General Holidays) does not apply when a collective agreement confers on employees' rights and benefits at least as favourable as those conferred by Division V in respect of length of leave, rates of pay and qualifying periods for benefits."[30]

In other words, paragraph 168(1.1) affects the way the parties must conduct themselves in relation to the minimum labour standards referenced in the paragraph. In fact, the parties will no longer be subject to the protection of each of the articles but rather be covered by a global protection under the sub-section in question, subject to the test of metaphorical balance.

CUPE believes that including paid medical leave in paragraph 168(1.1) would be a significant rollback of the protections surrounding sick leave. For example, an employer could try to argue that a collective agreement allowing 12 sick days instead of 10 would justify the employer imposing the requirement of stricter medical certificates or even justify a lower wage rate for the period of paid sick leave.

It is vitally important that all articles contained in "Section XIII – medical leave" be considered as a minimum standard to be met and CUPE is strongly opposed to the inclusion of paragraph 168(1.1) in Section XIII.

Further, employers should not be concerned about an accumulation or compounding of leaves stemming from other leave provisions. On this question, arbitrators have already ruled that leave cannot be accumulated or added on when the leaves have the same objective.[31]

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[30] *ADM Milling Co.* v. *U.F.C.W., Local 175, [2002] C.L.A.D. No. 598*

[31] USW Local 14193 and Cameco Fuel Manufacturing Inc (23-07) Re et ATU Local 279 and Ottawa (City) (POL-E-01-24) Re

- *Should employers be provided with additional flexibility to designate an alternative 12-month period, other than a calendar or vacation year, for the purpose of calculating paid medical leave entitlements? If so, should this be subject to the agreement of any union representing affected employees?*

CUPE does not see a problem with having a period other than the 12 months of a calendar year for the purpose of calculating paid medical leave. However, we believe that such an agreement would need to be made by both sides in mutual agreement, between the union and employer.

In fact, in the spirit of cooperation and to ensure that such a change does not create friction between the employer and workers, it is always best to conclude bipartite agreements where the unions and employers come to agreement about such changes. Doing otherwise would open the door to employers changing the reference period with the sole objective of saving costs, to the detriment of workers.

7. Wage theft and enforcement

- *In the first round of consultations, stakeholders cited misclassification as a key form of wage theft in the trucking industry. What other forms of wage theft do you see most often, and why do they persist?*
- *Who in your sector is most vulnerable to wage theft, and what factors make them particularly at risk?*
- *What specific changes to the Labour Program's enforcement powers would most effectively reduce wage theft? For example, do you think that fines and penalties should be more severe, or that repeat offenders should have their business licenses revoked? Should they face prosecution?*

Wage theft is a widespread issue that affects hundreds of thousands of workers annually across Canada through unpaid overtime, misclassification, uncompensated hours, and subminimum wages[32]. It disproportionately impacts unorganized or vulnerable workers and newcomers. Wage theft is found in many sectors of activities where CUPE represents members, such as in health care, child care, education, communications, and in the transportation industry. It is prevalent especially amongst many female-dominated occupations represented by CUPE.

CUPE has been raising public awareness about wage theft in the airline sector across Canada since 2023[33]. CUPE's campaign speaks about both unpaid work and subminimal wage compensation of flight attendants. CUPE has called for legislative and regulatory changes to the *Code* to force all airlines to pay for all hours at work at the regular rate of pay. A probe on unpaid work containing multiple phases was launched by the Minister of Jobs in the fall of 2025. It confirmed the existence of subminimum wage compensation for the most junior flight attendants[34], but avoided recognizing unpaid work.

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[32] (n.d.). *The crisis of wage theft in Ontario*. Workers' Action Centre. https://workersactioncentre.org/wp-content/uploads/2025/10/WAC-Wage-Theft-Report-web.pdf
[33] (n.d.). *Unpaid Work Won't Fly*. CUPE's Airline Division. https://unpaidworkwontfly.ca/
[34] (n.d.). *Probe on Unpaid Work in the Airline Sector: Phase I - What we heard report*. Employment and Social Development Canada. https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/unpaid-work-airline.html

Wage theft isn't caused by a few "bad apples" in a specific industry or within a specific occupation. Fining them would not be sufficient to eradicate this widespread, systemic practice. Wage theft is often observed in hyper-competitive economic environments where employers are seeking ways to take advantage of weaker workers and labour laws to lower labour costs. In most cases, wage theft becomes apparent when it is turned into a systemic practice within an industry or occupation, where practices to avoid paying wages and other social protections become part of the business model as a means to compete and profit[35] by lowering labour costs. Government interventions in the bargaining process may also lower the bargaining power of workers in their attempt to end wage theft within workplaces and industries.

Wage theft is a visible consequence of a more general problem: suppressing the power of the most vulnerable workers in the labour market. CUPE recommends three key areas of intervention to break systemic wage theft practices and eradicate wage theft federal jurisdiction areas:

1. A stronger Labour Code

There is no provision in the *Code* that defines work. There is also no provision in the *Code* to prohibit unpaid hours of work when workers are not paid on a traditional hourly rate of pay. The *Code* only says, under section 178(5), that an employer is required to pay each employee a wage at a rate no less than the minimum rate fixed by ministerial order. There is also no definition of work and what counts as work in the *Code*, and the current definition of work in the regulation is too narrow to factor in the reality of workers in some key federal sectors, such as in transportation.

CUPE has advocated for the inclusion of a definition of "work" under the *Code*'s Part III and that all hours of work performed by flight attendants shall be paid at their regular rate of pay. The *Code* should also explicitly prohibit unpaid work.

2. More powerful enforcement mechanisms and remedies

The federal government should allocate sufficient resources to proactively enforce core elements of the *Code*, and not rely on self-audit compliance, as it did in the airline sector during Phase 2 of the probe on unpaid work, 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. Proactive inspections should be increased and targeted at sectors with significant misclassification and wage theft – including the airline industry.

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[35] For example, under federal jurisdiction, wage theft was identified in the banking industry when a major class-action ruling against Canadian banks established that systemic "off-the-clock" work and policies demanding unapproved overtime violated the Canada Labour Code. In addition, as shown in the previous consultation, the misclassification of employees as independent contractors in the interprovincial trucking industry is a well-documented form of systemic wage theft practice in the federal sector.

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.

In its submission to strengthen the *Canada Labour Code's* Administrative Monetary Penalties (AMP) system, CUPE proposes to significantly increase penalties related to wage theft, index those applicable maximum penalties annually, and extend the naming of employers in violation of the *Code* to online and web-based high-distribution publications, including local and national newspapers. CUPE would not be opposed to these employers being prevented from accessing federal programs and contracts. However, CUPE does not believe that criminalizing wage theft through prosecution would solve the issue. Past experiences of criminalization of wage theft have shown little success[36]. Money is central to wage theft. Higher penalties and more effective remedies should be enough to dissuade anyone from using such practices in order to undermine competition, reduce labour cost, and/or make more profits.

3. Free collective bargaining that includes the full right to strike

Finally, CUPE told the federal government that the issue of unpaid work of flight attendants needed to be addressed at the legislative level back in 2023. No one should bargain for minimum standards, especially when there is a systemic, industry-wide practice that can hardly be solved at the bargaining table. Despite our warning, CUPE was told to resolve this issue at the bargaining table. It led to a significant work stoppage that failed to resolve the issue at Air Canada and across the industry. Worse, when attempting to resolve this issue at the table, the Minister of Jobs decided to intervene to remove flight attendants' legal bargaining leverage, invoking section 107 of the *Code*, weakening the bargaining power of flight attendants, even though the unpaid work and wage theft of flight attendants were at the core of the labour dispute.

The federal government must refrain from intervening and reducing the bargaining power of workers and limiting the right to strike. This limits the ability of the parties to find solutions to problems such as unpaid work and wage theft within workplaces.

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

As mentioned in our previous submission as part of this review, there are significant gaps in the new anti-scab provisions in the *Canada Labour Code* that must be addressed with regard to workplace, labour-replacing technologies, and burden of proof.

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[36] Tucker, E. (2015). When Wage Theft Was a Crime in Canada, 1935-1955: The When Wage Theft Was a Crime in Canada, 1935-1955: The Challenge of Using the Master's Tools Against the Master. *Osgoode Hall Law Journal of York University*, *54*(3). https://doi.org/https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3163&context=ohlj

These provisions came into force on June 20, 2025, following the adoption of Bill C-58.[37] They ban employers from using several types of people as replacement workers,[38] 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.[39]

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.[40]

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 eight 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,[41] 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.

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[37] 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.
[38] *Canada Labour Code* (R.S.C., 1985, c. L-2), subsection 94(4) et seq.
[39] *Canada Labour Code* (R.S.C., 1985, c. L-2), subsections 94(4)(a) and (c).
[40] CIRB, *Canadian Union of Public Employees Local 4317 v. Montreal Gateway Terminals Partnership*, 2026 CIRB 1225, paras. 57 and 61.
[41] CUPE, *Submission to Employment and Social Development Canada*, January 31, 2023, p. 9.

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).[42]

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).[43]"

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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[42] 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.

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