



Canadian Union of Public Employees

Submission to the Legislative Committee
on Bill C-39, an Act Respecting Certain Measures
to Strengthen the Economy

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INTRODUCTION

The Canadian Union of Public Employees (CUPE) is Canada's largest union, representing over 800,000 workers, including more than 40,000 in federally regulated sectors such as airlines, communications, ports, public transit, ferries and rail, and Crown corporations.

Changes to federal labour law have implications beyond federally regulated workplaces. Just as provinces followed the federal government's lead in adopting the foundations of modern labour relations established by Privy Council Order 1003 in 1944, changes to the federal framework today can influence provincial labour laws and collective bargaining practices, affecting CUPE members across Canada.

This brief focuses on the amendments proposed in Part III of Bill C-39, particularly those affecting Part I of the *Canada Labour Code (CLC)*.

Summary of CUPE's Position

1. Remove amendments to section 107 in Bill C-39 and instead repeal section 107 from the *Canada Labour Code*.
2. Require the explicit consent of bargaining unit members and their local unions for any application for geographic certification.
3. Extend successor rights to all federally regulated industries.
4. Maintain the existing 60-day conciliation period and permit the appointment of a special mediator only if conciliation ends without an agreement.

The Right to Strike and Labour Peace in Canada

In *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, the Supreme Court of Canada affirmed that the right to strike is constitutionally protected as an essential component of freedom of association.

Once criminalized, the right to strike has evolved into a more predictable, stable and peaceful labour relations system where the right to strike can continue to be used lawfully, once certain conditions have been met. This system was developed around the understanding that disputes around freely and fairly bargained collective agreements must be solved through a grievance procedure, that collective bargaining must be done in good faith, and that workers maintain a meaningful right to strike, if needed. This framework has contributed to a stable and peaceful system of labour relations, with more than 95% of collective bargaining rounds concluding without a work stoppage.

Labour disputes are inevitable. The frequency of disputes will fluctuate with economic and social conditions, such as inflation and technological change. By entrenching extraordinary power with the Minister to terminate lawful job action, Bill C-39 undermines the fundamental balance that has made Canada's labour relations system stable, predictable and peaceful. These changes will result in greater instability and prolonged disputes.

Forced arbitration is no substitute for free and fair collective bargaining. It does not incentivize good faith bargaining, it deprives workers of their bargaining power and risks leaving issues unresolved, entrenching divisions and damaging future labour relations.

Section 107—Entrenching Extraordinary Power with the Minister

For CUPE, the most concerning provisions of Bill C-39 are those that expand and entrench ministerial intervention in collective bargaining under section 107 of the *Canada Labour Code*.

Although section 107 has existed for decades, its use has escalated dramatically since 2024. On seven occasions, the Minister has invoked section 107 to direct the Canada Industrial Relations Board (CIRB) to end lawful strikes or lockouts, including its attempt to end a lawful strike by CUPE's Air Canada Component. Previously, ministerial directions under section 107 typically posed questions for the CIRB to consider. Since 2024, the Minister has issued direct orders and the CIRB has concluded it has no discretion to refuse or modify.

CUPE and other unions are challenging the federal government's use of section 107 in court. Rather than rein in this relatively recent and aggressive use of ministerial power, Bill C-39 would explicitly authorize it as a permanent feature of federal collective bargaining. There is now a defined pathway for getting to government intervention—a few boxes to check—completely undermining the leverage workers gain from the credible threat of a strike.

There are no guardrails.

1. Subsection 107(1) broadens ministerial power.

The proposed language authorizes the Minister to “take any measure” rather than “do such things” based on what is “in the Minister’s opinion,” rather than when the Minister “deems it expedient.”

2. Subsection 107(2) grants new ministerial power.

The proposed language explicitly allows the Minister to direct the CIRB to end a strike or lockout, extend the term of a collective agreement, or impose binding arbitration. As noted, CUPE and other unions are arguing in court that this is not a power the Minister is currently granted, despite recent invocations of section 107 to end lawful strikes. Therefore, we see these ministerial powers as new. There are only two conditions that must be met to carry out these powers: (1) the Minister has considered the special mediator’s report; and, (2) the Minister is of the opinion that the strike/lockout “adversely affects or may adversely affect the national interest.” Proof of harm is not required; the possibility of an adverse effect is sufficient. Conditions this broad are not guardrails. They are permission slips.

3. Subsection 107(3) allows the Minister to define “national interest.”

“National interest” is not defined in the bill. Rather, subsection 107(3) says the Minister can consider *anything* when deciding what “national interest” means. The Minister may consider (a) whether a strike/lockout is having a “significant impact on the Canadian economy”; (b) whether the strike/lockout is causing “serious social disruption”; and, whether ending a strike would (c) impact on “freedom of association.”

None of these considerations are mandatory. The bill does not define what constitutes a “significant impact on the Canadian economy” or “serious social disruption.” Even consideration of the potential infringement of workers’ freedom of association is not required.

These provisions give the Minister extraordinary discretion to decide when workers can exercise their right to strike. This is unprecedented in Canadian law or in any G7 country. Under Bill C-39, the right to strike would exist only in the abstract. A right that can be taken away the moment it is exercised is not a right at all.

The 2025 CUPE Air Canada Component negotiations clearly demonstrate how government intervention undermines collective bargaining. The employer avoided negotiating the main issues in dispute, anticipating that the federal government would intervene. Air Canada’s CEO publicly acknowledged that the company had not prepared for a strike because it expected the federal government to intervene. When the government ordered striking CUPE members at Air Canada back to work, they defied that order and asserted their right to strike. Only then did Air Canada return to the bargaining table. Once they started negotiating again, an agreement was reached within hours.

This experience illustrates the fundamental problem with section 107: when employers can rely on government intervention to end lawful strikes, they have little incentive to bargain in good faith or put forward their best offer.

Rather than encourage negotiated settlements, Bill C-39 would reward employers for holding out until the Minister intervenes. Far from improving the stability and predictability of federal labour relations, these changes would further undermine the balance of power at the bargaining table and increase the likelihood of disputes.

Bill C-39 would undermine workers’ most significant leverage at the bargaining table: the right to withdraw our labour. Free and fair collective bargaining works because both sides have something at stake. When employers can rely on government intervention to end lawful strikes, there is little incentive to put their best offer forward. This tilts the balance of power further towards employers, including some of Canada’s richest and most powerful companies.

The proposed changes to section 107 raise constitutional concerns. In a recent decision from the Administrative Labour Tribunal of Quebec, the recently adopted provisions of Bill 14, which were largely inspired by section 107, were deemed constitutionally

inoperative and contrary to provisions under the Charter. These provisions gave the government the right to order an end to a labour dispute if the health and well-being of the public were at risk. This decision raises serious questions about whether Bill C-39 will withstand constitutional scrutiny.

The federal government's recent use of section 107 to end lawful strikes has proven that even the existing language is vulnerable to abuse. CUPE therefore calls for all proposed amendments to section 107 in Bill C-39 be removed from the bill and to instead repeal section 107 in its entirety from the *Canada Labour Code*.

Proposed Changes to the Collective Bargaining Process

a) Geographical Certifications for Longshoremen

Bill C-39 introduces a significant change for longshore workers. Two or more employers, the Minister of Labour, or the CIRB could initiate a process to have two or more units in a geographic area treated as a single bargaining unit for collective bargaining. Currently, only unions can make such a request. The bill would also enable the Cabinet to extend this model to other federally regulated industries.

CUPE supports the right of workers and local unions to determine the bargaining unit boundaries that best ensure effective representation. Bill C-39 opens the door for employers, the Minister of Labour, or the CIRB to bypass democratically constituted unions in determining those boundaries. Decisions about bargaining unit representation have historically rested with workers and their unions, and that right must be protected. Any changes to bargaining unit certifications should not be permitted without the explicit consent of the bargaining unit members and their local unions.

b) Successor Rights at Airports

Contract flipping is a common practice in the airport sector, where there are frequent changes in service providers to circumvent union certifications and existing collective agreements. Bill C-39 introduces additional protections that mandate the transfer of existing certifications and collective agreements when a contract is awarded to a different provider. Furthermore, all legal proceedings against the former provider, such as ongoing grievances and complaints filed with the CIRB, also get transferred to the new one.

CUPE supports these changes but calls for their extension to all federally regulated industries. With increased privatization of federal infrastructure and services, workers in other sectors face similar risks. For example, changes to the ownership structure of ports could lead to more contracts flipping.

c) Extending Timelines

Bill C-39 introduces changes that extend bargaining timelines. The bill:

1. Lengthens the conciliation period from 60 to 90 days;
2. Requires parties to begin bargaining earlier if there was a strike or lockout or binding arbitration in the previous round of bargaining, or if the contract is more than five years old (between 180 and 200 days rather than 120 days);
3. Mandates post-bargaining mediation within six months of a strike, lockout or arbitration order.

The justification for a prolonged bargaining and conciliation period appears to rest on the assumption that longer bargaining periods increase the likelihood of reaching a negotiated settlement. In reality, meaningful progress usually only occurs late in bargaining, when a deadline approaches or a third party becomes involved. Earlier involvement by a conciliator may help parties reach an agreement before a strike or a lockout begins—but only if section 107 is revoked. It is the threat of a strike that pushes employers to bargain for a settlement in good faith. Without that threat, meaningful bargaining will be highly undermined.

The pressure of time often helps the parties move during bargaining. Extending conciliation risks weakening that pressure and delaying settlements. Similarly, there is no reason to appoint a special mediator before conciliation concludes if the parties are making meaningful progress. Special mediators should only be appointed after conciliation has ended without an agreement, following consultation and with the consent of both the union and employer.

d) Special Mediator

Bill C-39 formalizes the role of special mediators, whom the Minister already has the authority to appoint. Under the proposed changes, a special mediator may be appointed no later than day 75 of the conciliation period. The special mediator would have 21 days to help the parties reach an agreement or submit a report to the Minister. Unions would then have to wait 10 days after the report before striking, concurrent with the existing 21-day cooling-off period. The report would become public five days after the parties receive it.

CUPE has experience with special mediators in recent rounds of bargaining at both Air Canada and WestJet. The appointment of a special mediator did not prevent a labour dispute in either case. The effectiveness of a special mediator ultimately depends on employers having a genuine incentive to bargain in good faith. As long as section 107 allows employers to rely on government intervention, a special mediator risks becoming just another procedural step towards forced arbitration. It could further delay workers' ability to exercise their right to strike while employers wait for government intervention.

The special mediator's findings and recommendations are not binding on the Minister. Bill C-39 requires only that the Minister considers the special mediator's report, not that

they act on its contents. Even if a special mediator found that an employer had not meaningfully participated in bargaining, the Minister could disregard that finding and still intervene to end a lawful strike. The Minister would only need to demonstrate that the report had been considered. This is yet another way in which the proposed changes to section 107 would expand the ministers already extraordinary powers to intervene in collective bargaining.

CONCLUSION

Rather than strengthen the conditions for free and fair collective bargaining, Bill C-39 would normalize government intervention in labour disputes. It would give employers more reason to hold out for ministerial intervention rather than negotiate a settlement, undermining the incentives that make collective bargaining work.

If the federal government's objective is to provide greater stability and predictability to investors and federal enterprises, Bill C-39 misses the mark. This will not bring labour peace. It is a recipe for more frequent, more contentious and more difficult disputes. No amount of mediation or conciliation can compensate for the loss of workers' most important source of leverage.

CUPE recognizes that Bill C-39 contains some positive measures, including first-contract arbitration for all newly organized workers in the federal sector and successor rights at airports. However, these improvements are undermined by the full-blown assault on workers' constitutional right to strike.

CUPE supports the goal of building a strong, stable Canadian economy with good-paying union jobs. That requires an industrial strategy that puts workers first, not an omnibus bill that undermines workers' rights alongside environmental and Indigenous protections.

CUPE implores Parliament to withdraw Bill C-39 or to amend it to protect and expand workers' fundamental rights. We remain willing to work collaboratively with the government to advance our shared goal of building a strong Canadian economy.