



The following is Teamsters Canada’s response to Employment and Social Development Canada’s discussion questions relating to upcoming legislation aiming to prohibit replacement workers in federally regulated industries.

Teamsters Canada represents more than 125,000 workers in all sectors of the Canadian economy. Teamsters Canada is Canada’s transportation and supply chain union representing workers in all modes of transport: air, rail, road and more.



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

The current provisions under Part I of the Code in relation to replacement workers are wholly inadequate and, despite their intent, do not prevent the use of replacement workers by any federally regulated employer in practice.

The only stated restriction in the Code is towards the use of strike-breakers that have the “demonstrated purpose of undermining a trade union’s representational capacity.” In practice, however, employers under the federal Code have used replacement workers simply by maintaining that they continue to bargain with the union for the workers that are on strike. This “limited ban” does not commit an employer to any sort of concrete action, nor does it restrict the use of replacement workers in practice.

The current provisions in the code were introduced in 1999 in line with a recommendation from the 1995 Sims report, which drew its conclusions from consultations with industry and labour. It is important to note, however, that a minority recommendation of the report was to implement a complete ban on replacement workers noting that the use of replacement workers both “upsets the economic balance of power” as well as “compromises the freedom of expression of workers.”

This minority recommendation is much more in line with the views of the International Labour Organisation’s (ILO) decisions on freedom of association which state:

918. The hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association.

919. If a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.¹

The Supreme Court of Canada recognized the right to strike in its 2015 decision², stating that: “This collective action at the moment of the impasse is an affirmation of the dignity and autonomy of employees in their working lives.” The decision also refers to international human rights as well as ILO treaties noting that “Canada’s international human rights obligations also mandate protecting the right to strike as part of a meaningful process of collective bargaining.”

Although the 2015 Supreme Court ruling was not in relation to the use of replacement workers, Teamsters Canada agrees with the ILO decisions which recognize that these replacement workers are an affront to the rights of workers. We believe that the government of Canada, as well as provincial governments, should protect this right to strike as recommended by the Supreme Court. Canada’s

¹ Freedom of Association. Compilation of decisions of the Committee on Freedom of Association / International Labour Office - Geneva: ILO, 6th edition, 2018

² <https://www.canlii.org/en/ca/scc/doc/2015/2015scc4/2015scc4.html>



Parliament must amend the Federal Labour Code to ban replacement workers with very limited exceptions and robust enforcement provisions.

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

Replacement workers have been used on many occasions in federally regulated sectors and as a union with many members working under federal jurisdiction, Teamsters Canada believes that their use is a problem and as mentioned in the ESDC discussion document Canada's Labour Program has estimated their use in 42% of strikes over the last ten years. The simple potential for their use exacerbates the imbalance in employer-worker power in all contract negotiations as the threat to remove the rights of workers to withdraw their labour hangs over the bargaining table. The use of strike breakers will also necessarily continue to grow in any sector in which they are not prohibited by government.

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

Replacement workers serve only to allow employers to impose terms and conditions onto workers. They violate the rights of free association of workers to allow industry to continue their operations without consideration for the rights of the workers they employ.

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

As was stated in the minority decision of the 1995 Sims report, there are both immediate and long-term effects of continuation of allowing replacement workers. Their use is a violation of the rights of workers which, in addition to constituting a moral affront also breeds resentment and frustration amongst workers, as well as increases the likelihood of violence on the picket line. This practice also exacerbates the power imbalance between workers and employers which would ostensibly lead to poorer work conditions for all workers, whether unionized or not, in the long term.

As explained under Question 1, Teamsters Canada believes that replacement workers directly violate the Charter rights of workers to free association, free collective bargaining, including the right to strike. Thus, without effective restrictions on replacement workers, the rights of Canadian workers under the jurisdiction of the federal government are not being upheld.

Replacement workers have also been a leading cause of violence and vandalism on picket lines, by exacerbating tensions and creating a strong sense of injustice amongst workers. These sentiments often persist long after a strike where replacement workers have been used and can cause deep divisions amongst workers and their families especially in small communities.

A 1998 American study by Cramton and Tracy examined 3,129 contract negotiations involving 312 strikes in the 1980s. Although replacement workers were involved in only 14.1% of strikes, forty-six percent of negotiations involving major violence were associated with the use or replacements which lead the authors of this study



to conclude that replacement workers “increase the incidence of violence” during strikes.³

We are not aware of any long-term data collection on the incidence of violence with replacement workers in the Canadian context. However, it is our experience as a Labour union that the likelihood of violence is increased with the employer use of replacement workers. Numerous examples of in recent Canadian workers’ history illustrate this phenomenon vividly. In 1975 a 20-month-long United Aircraft strike in Longueuil, Quebec where replacement workers were brought in, saw bloodshed and over 100 cars set on fire. At the 1977 Montreal flour Mill Strike, private security hired to protect replacement workers fired shotguns on striking workers resulting in numerous injuries. These events lead to Quebec adopting its current anti-scab legislation in 1977. In recent years, federally regulated workplaces in Quebec without anti-scab legislation have also experienced less dramatic but notable violence with the use of replacement workers. In 2002 a ten-month-long strike took place at Vidéotron during which replacement workers were brought in and numerous acts of vandalism including the slicing of cable lines occurred. Similarly, in the same year Sécur hired replacement workers during a strike of 900 security guards and several ATMs were vandalized and rendered inoperable.

Outside Quebec, many picket line scuffles and acts of violence were instigated by the arrival of replacement workers. In 2002 several CAW members at Navistar in Chatham, Ontario, were critically injured after a security van, which was hired to shuttle in replacement workers, rammed through a picket line. Most recently in 2021, a protracted two-year-long strike at CESSCO in Edmonton, Alberta, involved several confrontations between picketers and replacement workers including attempts by a van to drive through the picket line⁴. Most dramatically, in 1992 at the Royal Oak Mine strike in the Northwest Territories, the company flew in replacement workers from all over Canada which led to rioting by striking workers and a criminal bombing where nine replacement workers died in an explosion. These events and the lived experience of Teamsters members on picket lines have brought us to understand well that replacement workers increase the risks of violence.

In the long term, the very potential for the use of replacement workers exacerbates an already unjust power imbalance at the bargaining table. Replacement workers directly remove the most effective leverage workers have, to improve their material conditions through collective bargaining. In the preamble to the Canada Labour Code Part I, it specifies that the Parliament of Canada “deems the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all.” In addition to fomenting acrimonious and sometimes violent labour relations, the potential use of replacement workers is not in keeping with the stated intent of the code as it diminishes the possibility of workers to obtain their just share of the fruits of progress as part of collective bargaining.

³ Cramton, Peter, and Joseph Tracy (1998). “The Use of Replacement Workers in Union Contract Negotiations: The US Experience, 1980-1989.” *Journal of Labor Economics* 16, 4: 667-701.

⁴ <https://www.cbc.ca/news/canada/edmonton/alberta-s-longest-legal-lockout-in-2-decades-is-ending-now-what-1.6501089>

Employers will often refer to anti-scab legislation as “unbalanced” approach to labour relations. However, replacement workers which remove the power of a strike fundamentally upset any semblance of power balance in the favour of the employer. In its 2015 decision, the Supreme Court of Canada noted that *“the right to strike also promotes equality in the bargaining process. This Court has long recognized the deep inequalities that structure the relationship between employers and employees, and the vulnerability of employees in this context. While strike activity itself does not guarantee that a labour dispute will be resolved in any particular manner, or that it will be resolved at all, it is the possibility of a strike which enables workers to negotiate their employment terms on a more equal footing.”*

We believe that only with fully protected right to strike can there be any semblance of fairness or balance in bargaining.

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

An appropriately applied and enforced prohibition on the use of replacement workers would impact Teamsters members favourably. A large proportion of our members work under federal jurisdiction and their bargaining would for the first time be on more equal footing with their employer. This would usher in a new era of fairness for workers and an upholding of their rights that in time would ensure that their work conditions were negotiated more equitably.

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

Yes. No worker should be compelled by their employer to become a replacement worker. This should be clearly stated, and workers should be informed of this.

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

Yes, they should be prohibited. Union decisions are governed by a majority vote. Just as individual members of the unit cannot remain on strike after a majority vote in favour of a tentative agreement, they also may not contradict a majority strike mandate by their unit. Allowing workers to disregard this democratic principle by working while their unit is on strike also opens the door to employer pressure tactics on individual workers.

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

The legislation should be clear about the work conducted for the employer and not gravitate towards defining it as restricted to the individuals or a single physical location.

In Quebec, the anti-scab provisions in the legislation are essentially based on the notion of an "establishment." It is in the "establishment" where the labour dispute exists that the employer is restricted in the use of individuals to perform the work of strikers.

However, this notion of "establishment" is still the subject of jurisprudential debate in Quebec, as evidenced by the decision⁵ of the TAH in Groupe CRH Canada, a decision that is currently the subject of an appeal in judicial review before the Superior Court. The prevailing case law, as endorsed by the Court of Appeal in *Journal de Québec*⁶ and *Les avocats et notaires de l'État québécois (LANEQ)*⁷, limits anti-scab provisions to "the precise place where the employer can theoretically lock the doors."

This obviously raises several issues in the modern context where the workplace has become dematerialized with the advent of teleworking. This is also true in the transportation field where our members do not necessarily work in a "facility" under the control of the employer. Their workplace happens to be a route, a destination, a transportation vehicle or other.

What should be protected is the work normally performed by the members of the bargaining unit in dispute, regardless of where their work is performed. The notion of "establishment" as used in Quebec is outdated and reduces the real balance of power that must be exercised in a moment as crucial as a generalized labour dispute.

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

Permission to allow certain workers to perform work should not be open-ended as to allow no limits on entering workers. For example, the exception for managers from the same work location under Quebec Law provides an opening that is incredibly hard to verify and report in cases of suspected abuse. In our opinion, the focus should be on the amount of work being allowed to proceed during a strike.

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

There should be exceptions only to avoid any harms to the public from the strike (i.e. public health and public safety) or considerable damage to the work site. These provisions should be well considered and put the burden of proof on an employer to avoid abuses. Such work should be undertaken in full transparency and can be undertaken in more of an expedited fashion with an agreement from the union participating in a strike.

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

The federal regulations should provide a mechanism for a representative of the union to have free access to the establishment on strike and/or lockout. This access is important to determine if the anti-scab provisions are being respected. In our experience with the Quebec legislation, it is sometimes very difficult to build a case with concrete evidence when there are suspicions that these provisions are not respected. Additionally, it can often take too long for an inspector or Tribunal to intervene to ensure compliance with the Code. This was the union's experience

⁵ <https://www.canlii.org/fr/qc/qctat/doc/2021/2021qctat5639/2021qctat5639.html>

⁶ <https://www.canlii.org/fr/qc/qcca/doc/2011/2011qcca1638/2011qcca1638.html>

⁷ <https://www.canlii.org/fr/qc/qccs/doc/2017/2017qccs5226/2017qccs5226.html>



with the recent Teamsters Canada labour dispute in 2022 at Molson in the south shore of Montreal.

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

- on work stoppages?
- on labour relations?
- on the economy?

Employer oriented groups will often present arguments as to why anti-scab legislation is detrimental to society by claiming that these laws increase and prolong work stoppages and scare away investment. It is important to start off by stating that this debate should not be predicated on justifying the denial of basic rights to workers to maximize profits. It is equally unfair to claim that avoiding “supply chain disruptions” is a trade-off for the denial or rights of workers. Furthermore, as will be addressed in question 13, improving the ability of workers to obtain a better share of wealth will have positive impacts on inequality and poverty, and this economic impact should feature more centrally in this debate.

It is essential to recognize first of all, that, in the overall view of collective bargaining in Canada, strikes occur only in a small percentage of cases. According to Statistics Canada, although roughly 910,000 workers⁸ are under federal jurisdictions, strikes occurred at only 8 workplaces each year on average in the last ten years⁹. One study on federal worker strikes between 1991 and 1999 estimated that replacement workers were present in 18% of strikes¹⁰. Another study on the prevalence in the Ontarian context in 1991 estimated its prevalence at 13.8% of cases¹¹. As mentioned in the ESDC discussion document, from January 1, 2012, to August 1, 2022, the Labour Program estimates that employers used other workers and managers to do some or all of the work of striking or locked out employees in about 42% of all strikes and lockouts. We could thus be encountering rising proportion of instances where replacement workers are used under federal jurisdiction. However, although the presence of strong anti-scab legislation is incredibly important to protect the rights of workers as well as maintain a more equitable power dynamic at the bargaining table and reduce the risk of violence, the absolute number of cases of strikes involved each year is not likely to be extensive across the country’s workforce.

The use of strikes by workers in Canada is already significantly limited. During WW2 Prime Minister Mackenzie King adopted Order in Council P.C. 1003 which recognized trade unions but also made wildcat strikes and sympathy strikes illegal. Provinces have adopted similar legislation since then. Once a collective agreement is reached, workers forgo all rights to strike for the length of the agreement which in general lasts three to five years but sometimes longer. Strikes are only permitted

⁸ <https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/issue-paper-portrait-federally-regulated-private-sector.html>

⁹ Statistics Canada. [Table 14-10-0352-01 Work stoppages in Canada, by jurisdiction and industry based on the North American Industry Classification System \(NAICS\), Employment and Social Development Canada - Labour Program occasional \(number unless otherwise noted\)](#)

¹⁰ Jain, Harish and Parbudyal. Singh. “The Effects of the Use of Strike Replacements on Strike Duration in Canada.” Labor Law Journal. 50.3 (1999): p. 180-186.

¹¹ Haywood, Lee. “Replacement of Striking Workers During Work Stoppages in 1991”. Ontario Ministry of Labour, Industrial Relations Division, Office of Collective bargaining Information, April 1, 1992.



after bargaining for a new agreement has commenced and even then, there are limiting rules surrounding strikes in many jurisdictions. It is thus important to note that from our perspective employers in Canada already have a tremendous amount of stability and certainty regarding work stoppages.

Numerous studies have been conducted to assess the impact of anti-scab laws on work stoppage frequency and duration. While a few studies conducted in the 1990s found increase to strike incidence and duration, these results have been contradicted by more recent studies. In a study by Campolieti et al. (2014)¹², the authors found that anti-scab laws had zero impact on strike incidence. Duffy et al. (2009)¹³ also obtained contradictory results to earlier papers and found that work stoppages substantially declined two years after the introduction of the anti-scab legislation. A 2009 review paper¹⁴ by Associate professors Savage and Butovsky at Brock University noted that there are always numerous economic and societal events and trends outside the presence of anti-scab laws that make it incredibly difficult to attribute causation to the laws themselves. They note that *“even sophisticated regression analyses of the impact of labour legislation on the length and frequency of strikes cannot include the full range of variables affecting these outcomes nor establish causality”* (In Relation to Gunderson, Kervin and Reid, 1989¹⁵, Gunderson and Melino, 1990¹⁶, and Budd, 1996¹⁷).

In practice as a union, we have found that the restrictions on replacement workers in the provincial context have always had the potential to shorten strikes by virtue of creating a financial incentive for employers to bargain. Workers who are on a picket line are already typically taking financial losses despite the strike pay they receive from their union. An employer who can resume operations through strike breakers does not typically have any financial incentive to bargain with their workers to reach an agreement which can drag out a strike. We believe that anti-scab laws create more balance in the incentive to reach a deal.

With regards to the studies on the economic impacts of anti-scab legislation, Timothy Bartkiw, Associate Professor at Ted Rogers School of Management at Ryerson University conducted a thorough literature review which arrived at similar conclusion. As part of a paper written for the Ontario Ministry of Labour, to support the Changing Workplaces Review of 2015, Bartkiw’s review of the papers published on Ontario’s short experience with anti-scab legislation concludes that although more recent papers published after 2014 have more robust methodological model, *“Given a general lack of variation in labour policy over time for comparison to investment/employment fluctuations over time, this raises concerns about the reliability of model estimates of the specific proportion of variation in*

¹² Campolieti, Michele, Robert Hebdon, and Benjamin Dachis. (2014). “The Impact of Collective Bargaining Legislation on Strike Activity and Wage Settlements.” *Industrial Relations*. 53.3 (2014): p. 394-429.

¹³ Duffy, Paul and Susan Johnson. “The Impact of Anti-Temporary Replacement Legislation on Work Stoppages: Empirical Evidence from Canada.” *Canadian Public Policy*. 35.1 (2009): p. 99-120.

¹⁴ Savage, Larry and Jonah Butovsky. “A Federal Anti-Scab Law for Canada? The Debate over Bill C-257.” *Just Labour: A Canadian Journal of Work and Society*. 13 (2009): p.15-28.

¹⁵ Gunderson, Morley, John Kervin and Frank Reid. “The Effect of Labour Relations Legislation on Strike Incidence.” *Canadian Journal of Economics*. 22.4 (1989): p. 779-794.

¹⁶ Gunderson, Morley and Angelo Melino. “The Effects of Public Policy on Strike Duration.” *Journal of Labor Economics*. 8.3 (1990): p. 295-316.

¹⁷ Budd, John. “Canadian Strike Replacement Legislation and Collective Bargaining: Lessons for the United States.” *Industrial Relations*. 35.2 (1996): p. 245-260.

employment/investment that is correctly attributed to labour policy as opposed to other factors.” He additionally identifies that in many of these studies on the short Ontario experience, anti-scab laws were passed as part of a legislative bundle along with numerous other legislative changes and that their adoption coincided with major economic events such as the passing of NAFTA. Savage et al. (2009) stated that there is “no consensus on the economic causes and effects of anti-scab laws.”

If Canada adopts effective and enforceable federal anti-scab legislation, it will hardly be the first nor the last country to do so. In a 2021 report¹⁸, the Canadian labour union Unifor identified eight countries that currently have anti-scab laws or policies in addition to three Nordic countries which by virtue of their “social partnership” model, effectively discourage the use of replacement workers. Amongst the eight countries are three European Union countries (France, Spain, and Portugal) in addition to major Canadian trading partners such as Mexico, Brazil, and South Korea.

In conclusion, although upholding the rights of workers in Canada should not be framed as an inconvenience for the economy, there is no consensus on the impact of anti-scab laws with regards to investment or strike length and frequency. Our experience has been of shorter strikes duration under this type of legislation; however, we believe that the research aiming to quantify the impact of only anti-scab legislation on strike length and frequency is so far inconclusive.

13. Are there any other impacts not discussed in this paper that should be examined?

In the last two decades, troubling trends have emerged amongst certain provincial governments taking aim at the rights of workers. Actions taken by governments in British Columbia and Saskatchewan have led to the Supreme Court of Canada ruling on the constitutional right to collective bargaining in 2007¹⁹ as well as the right to strike in 2015²⁰. Despite these rulings by the highest court, we still see efforts to violate workers’ rights in Ontario, such as with bill 124²¹ (which was struck down by a superior court, and the government is still appealing²²) and bill 28²³ (which was later repealed by the government). We believe that governments must step up to protect workers’ rights in Canada and set a new tone by adopting anti-scab legislation.

We also believe that strengthening labour laws and upholding workers’ rights will have a positive impact on economic fairness in Canada. Income inequality in Canada has grown considerably in Canada over the last 40 years²⁴. Recent economic trends signal that this may soon worsen. In a 2022 report by the Future of Work, Economist Jim Stanford notes that “workers’ share of GDP has been eroded by falling real wages and the growing gap between labour productivity and labour compensation.” While the acceleration of inflation has eroded wages, we are simultaneously seeing

¹⁸ Fairness on the line: The case for anti-scab legislation in Canada Unifor Research Department, May 2021.

¹⁹ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2366/index.do>

²⁰ <https://www.canlii.org/en/ca/scc/doc/2015/2015scc4/2015scc4.html?resultIndex=1>

²¹ <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-124>

²² <https://www.cbc.ca/news/canada/toronto/bill-124-ontario-public-sector-wages-1.6668186>

²³ <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-28>

²⁴ Chancel, L., Piketty, T., Saez, E., Zucman, G. et al. World Inequality Report 2022, World Inequality Lab.



after tax profits in Canada rise to record share of the country's GDP²⁵. Therefore, we believe the timing is right to protect workers' rights by adopting anti-scab legislation to ensure "a just share of the fruits of progress to all" as the Canada Labour Code intended.

Lastly, as the ESDC discussion paper notes, there are studies on the potential for anti-scab legislation to increase unionization rates. It is important that this be examined, and its benefits clearly stated. In a 2004 study on inequality in the US, U.K. and Canada, Card, et al., concluded that "unionization helps explain a sizable share of cross-country differences in male wage inequality amongst the three countries."²⁶ They also determined that "de-unionization explains a substantial part of the growth in male wage inequality in the U.K. and the US since the early 1980s." This should raise some substantial concern in Canada as recent analyses by Statistics Canada have noted a drop in unionization rates in Canada in the last 40 years²⁷. Although not covered in this discussion, in addition to lower income inequality there are growing numbers of analyses on the social benefits of higher union density including increased levels of democracy²⁸ and wellbeing which extends to improved levels of personal and public health²⁹. We must better study and recognize these metrics to fully understand the beneficial societal impacts of more equitable labour legislation.

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²⁵ Report author's calculations from Statistics Canada Tables 36-10-010301 and 36-10-0117-01.

²⁶ Card, D., Lemieux, T. and W.C. Riddell. *Unionization and Wage Inequality: A Comparative Study of the U.S., the U.K. and Canada* (2003).

²⁷ <https://www150.statcan.gc.ca/n1/pub/36-28-0001/2022011/article/00001-eng.htm>

²⁸ "Unions and Democracy" by Christopher Schenk, CCPA (2014)

²⁹ Leigh JP, Chakalov B. Labor unions and health: A literature review of pathways and outcomes in the workplace. *Prev Med Rep.* 2021