



Federally Regulated Employers —
Transportation and Communication

Employeurs des Transports et Communications
de Régie Fédérale

Bills C-257 and C-295: Replacement Workers Issue

Bills C-257 and C-295, *An Act to Amend the Canada Labour Code (replacement workers)* are currently at various stages of debate in the House of Commons. They aim to prohibit employers under the Canada Labour Code – federally-regulated businesses – from using other workers, including existing non-bargaining unit employees, to perform the duties of employees who are on strike or locked out. While federally regulated enterprises are deeply concerned about the impact on themselves as employers, equally or perhaps more important is the direct impact on other enterprises and the country as a whole.

The proposed legislative changes would:

- **Negatively impact workers** – the best protection for a worker who is on strike is to have confidence that there will be a job to return to, and that is best assured by allowing that enterprise to remain operational during a strike. While some suggest that banning the use of other workers would result in more industrial harmony, studies have shown that anti-replacement worker legislation often results in an increase in strike incidence and duration. Therefore, longer strikes with limits on the enterprise's ability to continue operations can harm a worker's job security.

A ban could also have the effect of causing employers to reduce their reliance on permanent work forces over concern of vulnerability to such a ban.

- **Undermine the dependability of Canada's infrastructure industries** – continuity of service in the federally regulated infrastructure industries is important to virtually all Canadian enterprises, not just those under federal jurisdiction. For example, if a work stoppage took place in the telecommunications industry and data transmission lines failed, the ability of banks to settle domestic and international financial transactions would be seriously disrupted, damaging the confidence other countries have in Canada, in addition to the crippling effect it would have on domestic financial services. Similarly, the potential to have transportation services halted, ports closed, etc. would be felt by all Canadians and Canada's trading partners who rely on an uninterrupted flow of goods. Most federal businesses are providers of services where the ability to stockpile goods does not exist.
- **Detract from Canada's attractiveness as a place to invest** – In an era of global mobility of investment, such a provision would also be negatively perceived by potential investors to Canada, particularly Americans, as this type of restriction is unheard of in the USA.

Claims being made need to be addressed:

Balancing the rights of workers and the need to keep businesses operational during a labour dispute was thoroughly considered when Part I of the Canada Labour Code was reviewed in the mid to late 1990s.

At that time, the Commissioner for the Part I review, Andrew Sims, a leading neutral expert in industrial relations, did not support a ban on temporary replacement workers, since such a provision would unduly upset the balance of collective bargaining. A provision was enacted, however, prohibiting an employer from using replacement workers to undermine the union.

A number of statements have been made in support of legislation banning replacement workers. The facts, however, do not support these views.

Statement:	It will reduce violence on the picket line.
Fact:	Several studies show that replacement workers are not, in themselves, a significant factor in violence, but rather the union's management of the picket line. Violence is more likely to be associated with lack of punishment for violent behaviour, responses to employer attempts to continue operations and the increased level of stress associated with a strike situation. When combined with mass picketing, or alliances with other groups whose interests differ from the striking members, violence is more prevalent.
Statement:	It will lead to greater industrial peace.
Fact:	According to the Canada Industrial Relations Board, in 2005-2006, 97% of all collective agreements under federal jurisdiction were signed without a work stoppage. Anti replacement worker legislation is a solution for a problem that does not exist. In fact, studies have shown that anti-replacement worker legislation results in an increase in strike incidence and duration. All jurisdictions in Canada except Quebec and BC have rejected legislation banning replacement workers.
Statement:	It will restore balanced bargaining power.
Fact:	Bills C-257 and C-295, if enacted, would allow unions to negotiate in isolation of market realities. This will result in a more adversarial negotiating climate with the prospect of more rather than fewer work stoppages leading ultimately to further disruptions to key services to the public and more pressure on Parliament to enact back to work legislation. An employer's economic sanction equivalent to the union's right to strike is not a lockout, but rather, the ability to maintain operations during a strike, which includes the right to use other employees and replacements. The security for the union is that regardless of an employer's decision to hire replacement workers, employees are entitled to their jobs back once the strike/lockout is over.
Statement:	Employees on strike no longer have a weekly income and are therefore disadvantaged.
Fact:	There is no prohibition on employees seeking alternative work while they are on strike. Any prohibition on a business from maintaining effective operations therefore results in an imbalance.
Statement:	Prohibition of replacement workers reduces the length of strikes.
Fact:	Quebec, Ontario and British Columbia all publish information on duration of work stoppages (total number of person days lost per person involved) in their territory. Quebec and BC both have anti-replacement worker legislation but Ontario does not. The data show that in the 1999-2004 period in Quebec, in four of those six years provincial jurisdiction work stoppages were, on average, longer than those under federal jurisdiction. In the 1999-2003 period in BC, in four of those five years provincial jurisdiction work stoppages were, on average, longer than those under federal jurisdiction.

Conclusion

The changes proposed in Bills C-257 and C-295 will upset the existing balance in labour/management relations in a manner that is unnecessary and potentially counterproductive and they should not go forward in their present form.