

Submission on Bill C-257 *An Act to amend the Canada Labour Code (replacement workers)*

Submitted to the Standing Committee
on Human Resources, Social
Development and the Status of
Persons with Disabilities

Prepared by the Canadian Bankers Association

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CANADIAN BANKERS ASSOCIATION

Building a Better Understanding

Submission on Bill C-257, *An Act to amend the Canada Labour Code (replacement workers)*

The Canadian Bankers Association (CBA) appreciates the opportunity to present our views on Bill C-257, An Act to amend the Canada Labour Code (replacement workers), to the House of Commons Standing Committee on Human Resources, Social Development and the Status of Person with Disabilities. The CBA's members are very concerned about this bill, and in this submission to the Committee we will demonstrate that the bill is seriously flawed and should not be passed. In particular, we will address four major concerns:

1. The employer's right to maintain operations, serve its customers and thereby maintain the loyalty and business of its customers, is seriously compromised by the bill, and the adversarial nature of the industrial relations environment in Canada would be intensified.
2. The bill does not recognize the unique, national role of the federally regulated industries in contributing to the stability and success of the Canadian economy.
3. This bill would pose a high degree of operational risk for the financial services industry with potentially severe repercussions for consumers and business customers as well as for the national payments settlement and clearing system in the event of a strike in the telecommunications industry, where telecommunications companies are not able to make use of replacement workers.
4. Arguments which have been put forward in support of the bill do not reflect a true picture of labour unrest and strike experience in the provinces where there is currently a ban on replacement workers.

The CBA represents the 54 banks in Canada. Nearly 249,000 Canadians are employed directly by banks, 218,000 of whom fall under federal jurisdiction. The banks are major players in and make a huge contribution to the Canadian labour market. Permanent, full-time jobs have been increasing in the banking industry in recent years while the number of part-time jobs has been declining. The banks offer comprehensive pensions and benefits to all employees whether full-time or part-time. For years they have been developing and refining work-life balance programs, and they continue invest heavily in training and development. Even though fewer than 5,000 bank employees (just over 1%) have chosen to be represented by a union, the banks have serious concerns – as set out below - with Bill C-257.

The Employer's Right to Maintain Operations and to Serve its Customers

It has been claimed by the supporters of Bill C-257 that the ban on replacement workers would restore balance to federal industrial relations because the *quid pro quo* of the workers' right to strike is the employer's right to lock-out. But this is not the case – once a strike is in place, a lock-out is virtually meaningless. Furthermore, nothing in the law prevents the striker from taking a temporary job for the duration of a strike in order to supplement strike pay, but the employer's basic and urgent need to maintain the operations of the company is significantly curtailed. Managers and supervisors may be able to maintain operations for a time, but only in the very short term – they do not necessarily have the same skills and knowledge of the workers

on strike. If a strike moves into weeks or months, the ability of managers to maintain operations is, practically speaking, simply not feasible. Without the option of using replacement workers in a strike, particularly a prolonged disruption, there is a strong possibility that customers will take their business elsewhere, especially in a competitive industry, and there could be severe consequences for those on strike as well as the company management. Many supporters of the bill seem to think that a “replacement workers” can simply walk into a workplace and do the jobs of the strikers. Again, we would like to point out that in today’s knowledge-based economy, training, experience, and information are critical to jobs in financial services. Even with replacement workers it is very unlikely that the unit will function anywhere near the level of competency that it did prior to the strike action.

In spite of the claims of the bill’s supporters, two seminal reports on industrial relations in Canada, both of which have exerted strong influence on Canadian industrial relations law and practice, have recommended against a ban on replacement workers. The first of these was the Woods Report of 1969. It was the final report of the Task Force on Labour Relations, chaired by H.D.Woods of McGill University and appointed by the government of the day after several particularly severe and bitter labour disputes in the federal jurisdiction in the mid 1960s.

“...the employer’s economic sanction equivalent to the union’s right to strike rarely is the lockout; it is his ability to take a strike.....it is important to note that the employer’s capacity to take a strike depends largely on his right to stockpile goods in advance of a strike and to use other employees and replacements to perform work normally done by strikers. Together with the lockout, these possibilities constitute the employer’s quid pro quo for the worker’s right to strike...”¹

As a result, not only did the *Canada Labour Code* not ban the use of replacement workers, it also did not address the issue at all, one way or the other.

In 1996, the Sims Task Force, which was established to conduct a comprehensive review and updating of Part I of the Code, tackled the issue in their report, *Seeking a Balance*. The report acknowledges that the replacement worker issue was the most contentious issue the Task Force had to deal with, but they tackle it head on. Assessing the rationales of both sides of the issue (for and against the use of replacement workers in strikes), the report, in a majority view, recommends that temporary replacement workers should not be prohibited except where it is clear that the employer intends to undermine the union’s representative capacity - by hiring permanent replacements, for example. The report recognizes that the maintenance of operations by the employer is important to the pursuit of legitimate bargaining objectives – if the business fails or closes because operations cannot be appropriately maintained by management alone, both sides in the dispute have lost, both the striking workers who will not have jobs to return to and management who will lost their investment.

Not only did the Sims report recommend against a ban on using replacement workers, it also recommended that “...the law in this area should be expressed in the clearest possible language.” In addition, however, it should be mentioned that the Quebec member on the Task Force, reflecting the contentiousness of the issue,

¹ Report of the Task Force to Inquire into Part I of the Canada Labour Code, *Seeking a Balance*. Ottawa, 1996, page 123.

exerted his right to a minority opinion which was printed in the final report. However, the majority recommendation of the Sims report on this issue finally achieved consensus from employers, unions and government and was ultimately incorporated into the Code as S.94(2.1). Over the course of the consultations and development of the amendments to the Code, the governments of the day supported the carefully considered, reasonable and balanced limitation on the use of replacement workers, and it became law. Bill C-257 would override the balance and the consensus that were achieved in 1999 with serious, negative consequences.

The National Nature of the Federal Jurisdiction

Supporters of this bill are not taking into account the nature of the federally regulated industries. Section 2 of the *Canada Labour Code, Part I*, lists the industries within the legislative authority of Parliament to which the Code applies:

- (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
- (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
- (c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,
- (d) a ferry between any province and any other province or between any province and any country other than Canada,
- (e) aerodromes, aircraft or a line of air transportation,
- (f) a radio broadcasting station,
- (g) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,
- (i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and
- (j) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act

This list, with a few additions, reflects the list that was included in the *British North America Act of 1867* (now the *Constitution Act, 1867*). Generally, the provinces were assigned exclusive powers in “all Matters of a ... local or private Nature” while such works that were considered “to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces” were reserved for “the exclusive Legislative Authority of the Parliament of Canada...”

It is our strong belief that it would be misguided and short-sighted for the Parliament of Canada to adopt a single, isolated legislative provision from a provincial jurisdiction without a very thorough investigation into the facts and the context in which the provision operates. All of the federally regulated industries are essential in

various ways to the business operations of the country. They provide the framework or infrastructure for all Canadian economic and social activity. Through their sometimes complex, highly integrated networks of transportation, telecommunications and financial services, they maintain the essential east-west cross country links that are the foundation of our federal structure. A failure of a component of a federally regulated industry (e.g., airlines, ports, financial services) may have business and consumer impacts that are both national and international in scope and that affect Canada's reputation abroad. The ability to maintain at least a minimum level of service is critical to maintaining the integrity of the national infrastructure.

This is not to suggest that provincially regulated industries are not important to Canada's economy or that they are "second class" - not at all. But provincially regulated businesses are, in general, targeted to a more local or regional customer base. They are more likely to be goods producing or selling, while the federally regulated industries are mostly service industries. Work stoppages in provincially regulated industries can be devastating in terms of the people affected, (e.g., education, health services, local transportation services) and they occasionally require back-to-work legislation by a provincial government. But the effect is localized.

These are matters of fact, of understanding the different roles and impacts of the federally and provincially regulated industries. It should also be noted here that, in spite of these differences, only one other province has seen fit to adopt a ban on replacement workers since Quebec adopted such legislation in 1977. While BC adopted similar legislation in 1993, eight out of the 10 provinces have chosen not to take that route.

Technology and Banking: the Impact on Financial Services of a Strike in a Telecommunications Company

Since the early 1980s the banking industry and its customers, both consumer and business customers, have come to rely increasingly on the telecommunications industry for the electronic support and delivery of financial services. Canadians have been early and enthusiastic adopters of new banking technologies and steps taken by Canadian banks to meet these needs have helped to revolutionize banking services over the past several decades. Ever since the introduction of Interac's national Automated Banking Machine (ABM) network in 1986, Canadians have embraced the choice and convenience offered by electronic banking and have continued to benefit as various new service options have been introduced. Advances in telecommunications technology dismantle geographic barriers, and strengthen the infrastructure networks, significant benefits in a country with Canada's relatively small population and large landmass. Through such technology, Canadians can access financial services virtually anywhere anytime.

If the past is a reasonable guide, Canadians will continue to eagerly adopt the newest technologies made available to them by their financial services providers, and the banks will continue to invest in new and improved technologies. Furthermore, the use of banking technology will also grow as more Canadians gain access to the Internet. According to Statistics Canada, 7.7 million households, representing 64 per cent of Canadian households, reported that at least one member regularly used the Internet in 2003.

Electronic financial services delivery is provided through various networks or systems. For example,

- **Voice lines and local services at almost 6,000 branches in Canada.**
This is basic, local telephone service.

▪ **Data transmission lines and networks in support of banking services.**

The Canadian Payments System manages as one of four major networks, a data transmission system incorporating a single network provided by a major telecommunications carrier. This network supports electronic funds transfer, mainly business to business, payrolls, preauthorized debits and bill payments. Literally millions of messages are exchanged on this system on a daily basis. The ability to effect payments exchange is the core of the payments system. A strike by the carrier that provides this line could have major consequences if the line is not maintained or was allowed to fail for some reason. While there is a back-up system, it is a manual system, and functions more slowly. Payroll and other payment delays could cause havoc for businesses and individuals across the country.

▪ **Toll free lines used to support telephone banking and other banking services.**

Telephone banking permits customers to make account inquiries, transfers and bill payments from a telephone 24 hours-a-day. Customers wishing to conduct other business such as taking out a loan, buying a GIC or contributing to an RRSP can do so by talking to a customer service representative at a bank's call centre. These customers include many Canadians who are unable to get to an ABM or a branch because of illness, age or disability.

▪ **Private networks, to support automated banking machines and shared cash dispensing.**

Canadians logged almost 1.1 billion ABM transactions in 2005. In a 2004 survey by the CBA, 34% of Canadians responded that ABMs are their primary means of conducting financial transactions. The Interac ABM network, established in 1985, offers customers access to other financial institutions' ABMs. As of December 2004, there were over 90 members of the Interac Association and over 46,000 shared ABMs in the Interac network – 35 per cent belonging to major banks. The major banks also belong to international ABM networks enabling Canadians to use their cards at many machines around the world. According to a survey by the Bank for International Settlements (BIS) in 2003, Canadians are also the top ABM users in the world. In 2003, there were 43 ABM transactions per inhabitant in Canada compared to 40 in the U.K. and 37.1 in the U.S.

▪ **Dial up lines to support credit and debit point of sale terminals for the provision of goods and services to Canadians.**

The 2003 BIS survey indicates that Canadians are the world's top debit card users. The Interac Direct Payment (IDP) service allows customers to use their debit cards to pay for purchases at retail stores. This service is provided by Interac's financial institution members and is offered by more than 391,000 retailers across Canada. In 2005 over 3 billion direct payment transactions valued at more than \$137 billion were processed through the IDP service.

▪ **Internet banking, which uses the services of large Internet Service Providers that, in turn, rely on the provision of telecommunications lines to effect their services.**

A 2006 survey by the CBA indicated that 27 per cent of Canadians use the Internet as the primary means through which they conduct the majority of their financial transactions, and 45 per cent of Canadians did at least some of their banking online.

- **Mission critical networks and connections used to support the transmission of information and value to settle the payments system in Canada, including accounts at the Bank of Canada.**

Canada's large value transfer system, which is ultimately responsible for the daily settlement system is a multi-vendor service. That is, Canada uses two telecommunication vendors, so that if one system fails for some reason, the functions can be transferred to the other vendor. However, the Canadian telecommunication companies buy and lease lines and services from each other and as such, a prolonged strike at either of these providers could impact the functionality of the payments system.

The fact remains that the possibility of telecommunications failures constitute major operational risks for the Canadian payments system. Delays in the payments system can be devastating for businesses and for consumers. The need to use replacement workers in a telecommunications strike situation, whether at a regional, national or international level would be critical for maintaining the integrity of the system.

What the Statistics Show - Banning Replacement Workers Does NOT Promote Harmonious, Stable Industrial Relations

Since the introduction of Bill C-257 last June, we have been listening carefully to the arguments that have been advanced by those Members of Parliament and by the labour unions in support of an almost complete ban on the use of replacement workers. As a number of supporters of this bill have used data in conjunction with their claims that a ban on replacement workers would be good for workers and for the economy, we also took a comprehensive look at the data available, namely the statistics provided on the website of Human Resources and Social Development Canada's Workplace Information Directorate. In order to obtain a clear and complete picture of labour relations trends, we looked at 30 years of data (1976 to 2005) for Quebec and B.C., the two provinces that have banned the use of replacement workers; and Ontario, which, with the exception of a three-year period (1992-95), has not banned the use of replacement workers. The purpose of our examination was to determine if legislation limiting the use of replacement workers in Quebec and British Columbia has produced more stable labour relations in those provinces when compared to Ontario. We have avoided simple year-to-year comparisons which are potentially misleading because the data for all jurisdictions is volatile, depending on the years when collective agreements become due for negotiation.

We have used three specific measures to assess labour relations in the four jurisdictions:

- The percentage of total workers in the three provinces involved in a strike in each year since 1976 – the lower the number the greater the degree of labour peace.
- Days lost to strikes in each of the three jurisdictions that compares the record in Quebec and British Columbia with that of Ontario.
- A comparison of the number of strikes in Quebec and British Columbia with that of Ontario.

When comparing Quebec and Ontario using the three measures described above, the data strongly suggests that the Ontario labour market experienced significantly more stable labour relations than the Quebec labour market. See Tables A, B and C which indicate the following:

- Over the entire 30-year period, a worker in Quebec was two and a half times as likely to be on strike in any year than was a worker in Ontario. In only 1/3 of the years were proportionately fewer Quebec

workers affected by strikes than Ontario workers. Only in 1996 and 1997 was the proportion of workers on strike substantially higher in Ontario than in Quebec.

- Over this period, the duration of strikes in Quebec was 87% longer on average than strikes in Ontario.
- The number of strikes in Quebec, per 1000 workers, was higher than in Ontario for every year - and about 90% higher on average.

Table A

% of Total Workers Involved in a Strike – Quebec vs. Ontario

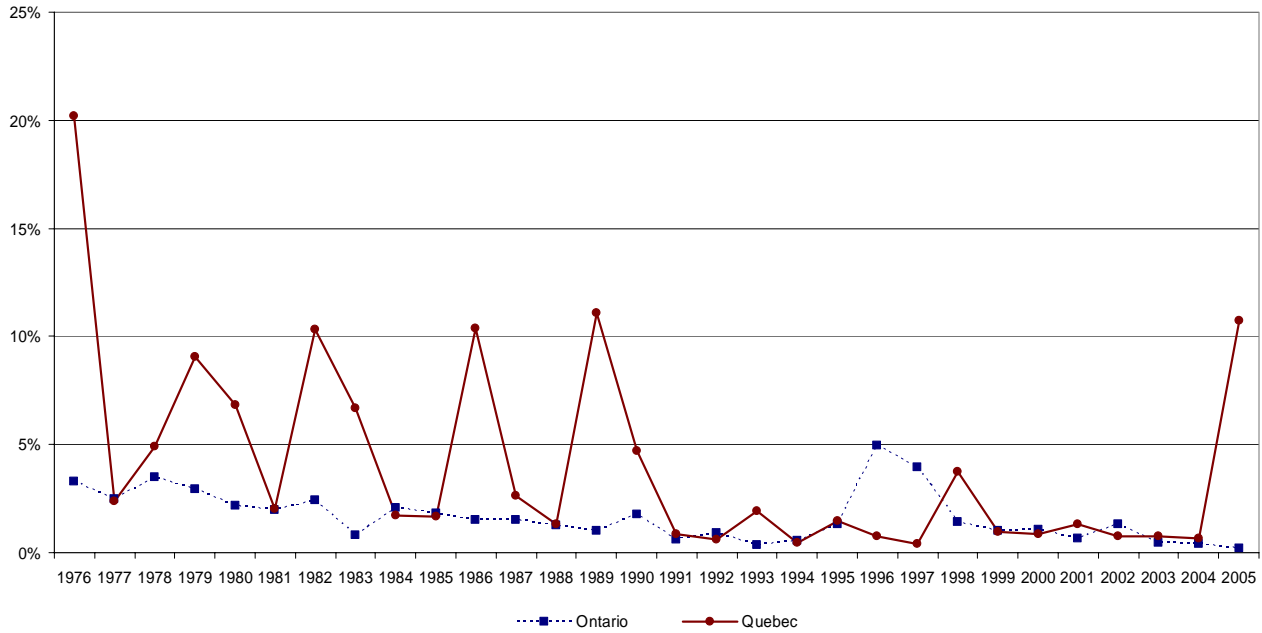


Table B

Number of Person Days Lost per Million Employees – Quebec vs. Ontario

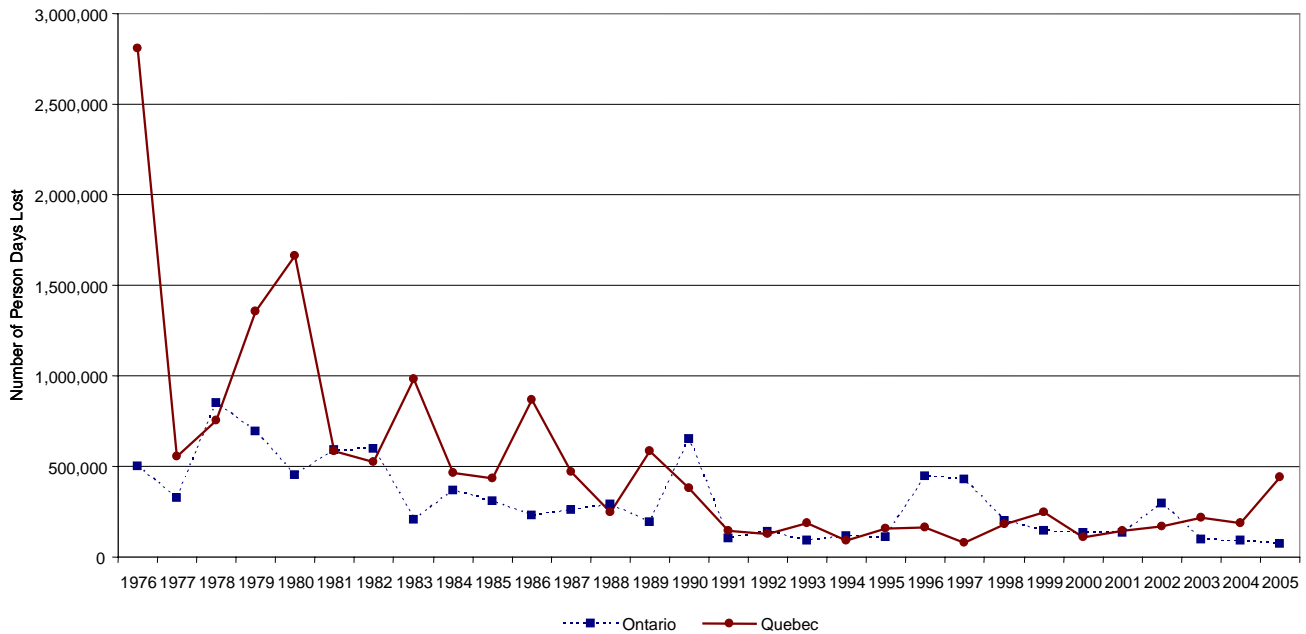
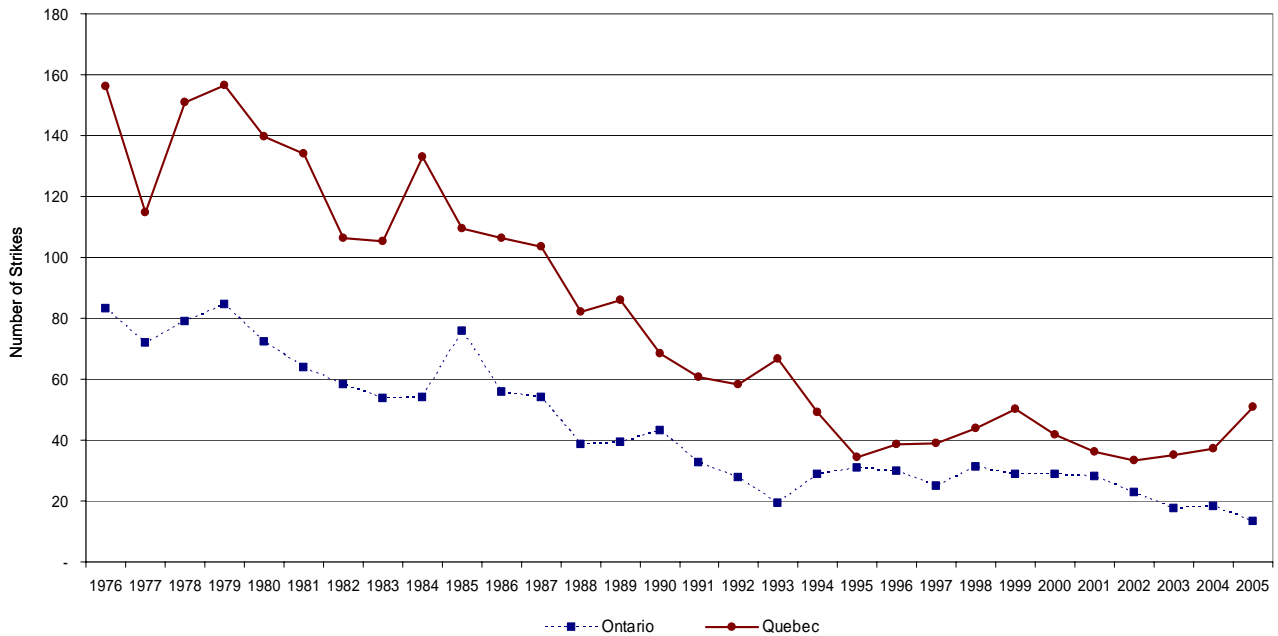


Table C

Number of Strikes per Million Employees – Quebec vs. Ontario



Comparing BC and Ontario, using the same three measures, the data again strongly suggests that the Ontario labour market experienced healthier labour relations than the BC labour market. See Tables D, E and F which indicate the following:

- Over the entire period since 1976, a worker in BC was more than two and a half times as likely to be on strike in any year than was a worker in Ontario. In only 1/5 of the years were proportionately fewer BC workers affected by strikes than Ontario workers.
- Over this period, the duration of strikes in BC was about twice as long as strikes in Ontario.
- The number of strikes in BC, per 1000 workers, was about 8% higher than in Ontario, on average. Since 1995, the BC experience compares favourably with that in Ontario by this measure. Such is not true of the other two measures.

Table D

% of Total Workers Involved in a Strike – British Columbia vs. Ontario

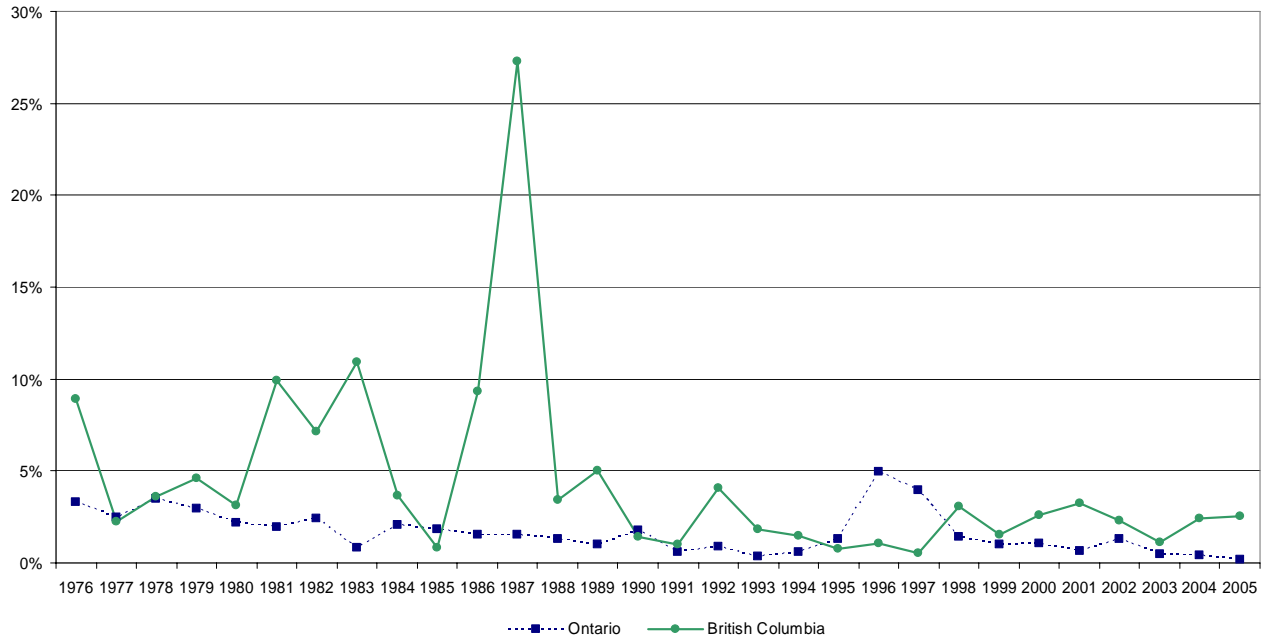


Table E

Number of Person Days Lost per Million Employees – British Columbia vs. Ontario

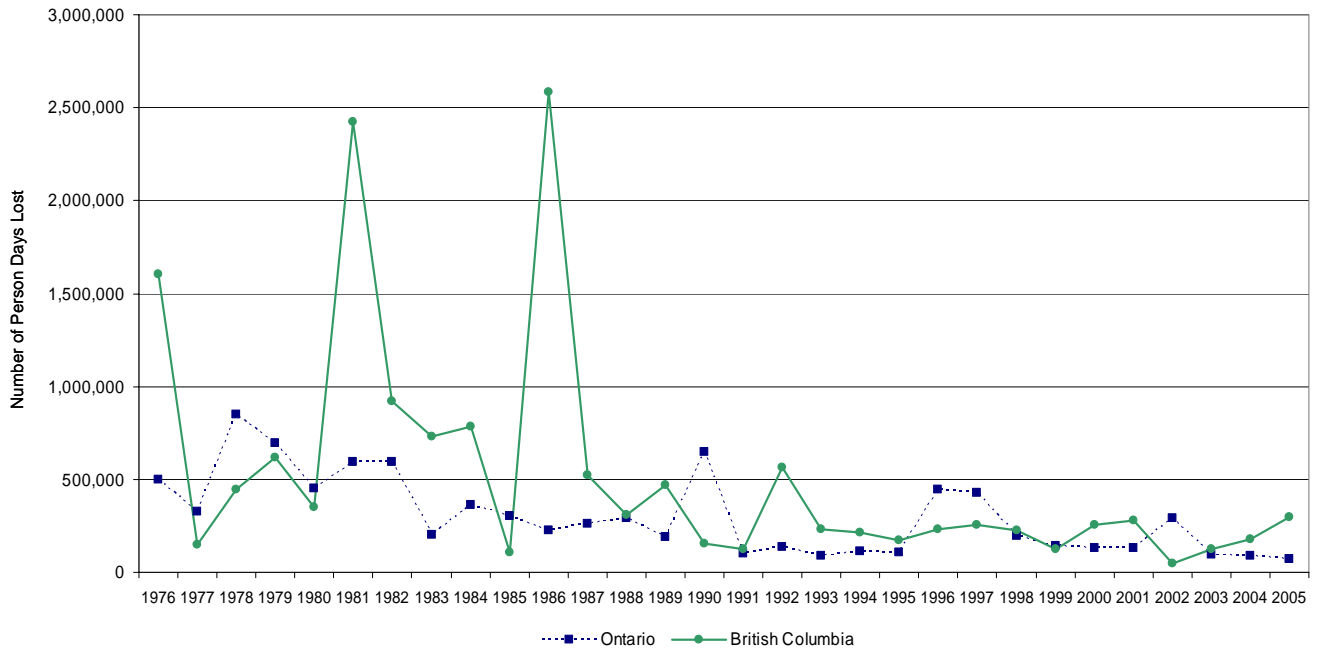
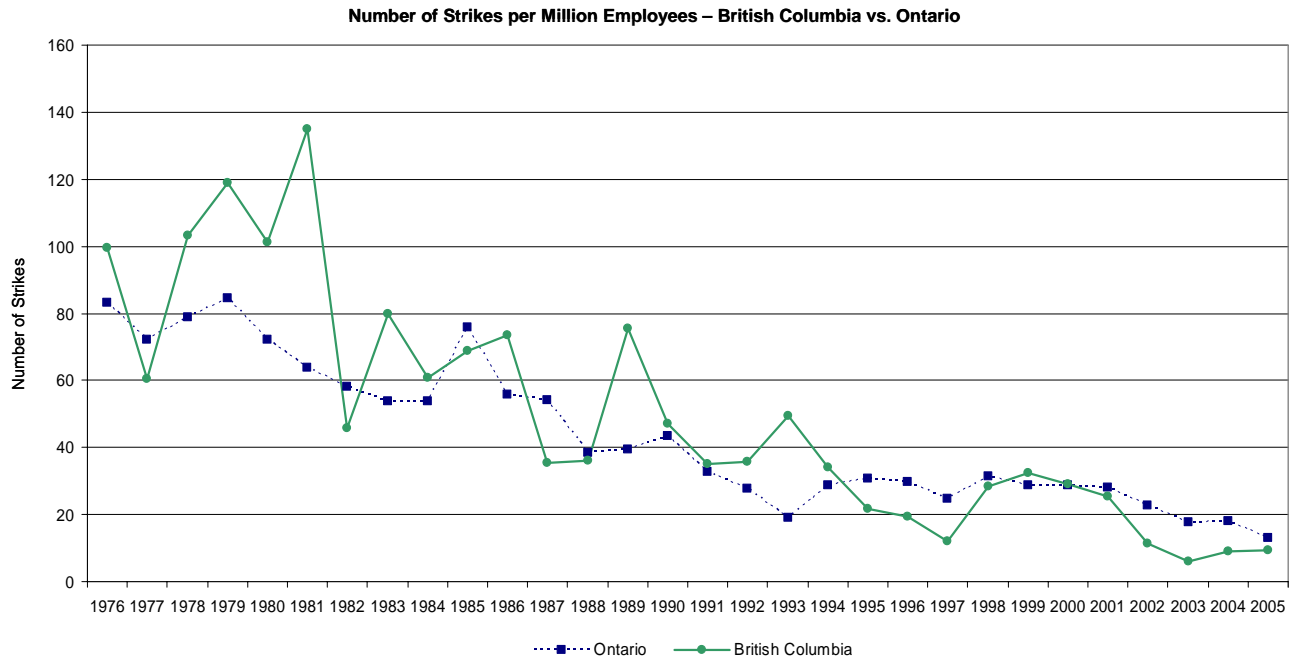


Table F



Concluding Comments

The Canadian industrial relations system can be a highly adversarial system, and labour disputes have often been very bitter. Although labour conflict has decreased everywhere from the volatile 1960s and 1970s, Canada remains close to the top in days lost due to work disruptions among the OECD countries. However, in recent years, there has been progress in forging more productive and constructive relationships between employers and unions and, often with the capable assistance and intervention of government facilitators, finding solutions more often to avoid strikes. In the federal jurisdiction, this improvement has been under the framework of the existing *Canada Labour Code* that governs the tripartite relationship between employers, unions and government. The framework includes the current provision on the limited use of replacement workers. The carefully researched balance in the Code ought not to be taken for granted. We urge members of the Committee to reflect carefully and without haste, on the potential ramifications of Bill C-257. Bill C-257 would destroy the current balance that is working in the interest of employers, unions, workers and the Canadian economy. It will set back labour relations in this country significantly. Instead of looking to the future and to building more constructive relationships, it looks to the bitter disputes of former decades. There is simply no need to alter what is working well. We urge you not to pass this bill.

Thank you for hearing our views.