

Opinion: Proposed Section 107 of the Canada Labour Code

Back-to-Work Orders, Compulsory Arbitration and International Labour and Human Rights Standards

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Scope. This opinion assesses the proposed amendment to section 107 against the standards developed by the ILO supervisory bodies and the UN Committee on Economic, Social and Cultural Rights (CESCR) under Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It does not address the separate questions of Canadian constitutional validity, administrative-law review, or the domestic legal status of international supervisory decisions.

Opinion in brief. The proposed amendment appears incompatible with the limits developed by the ILO supervisory bodies on governmental termination of lawful strikes and compulsory arbitration and is difficult to reconcile with CESCR practice under Article 8. Proposed section 107 would authorise the termination of an otherwise lawful strike and the imposition of binding dispute resolution where the Minister considers that the stoppage adversely affects or may adversely affect the “national interest”. Two of the express grounds for reaching that decision, namely “significant economic impact” and “serious social disruption”, raise distinct concerns under the international standards.

Significant economic impact does not correspond to a recognised ground for suppressing strike action. The CEACR has expressly rejected potential economic consequences and detriment to the general or national interest as sufficient grounds for prohibiting strikes, while the CFA has likewise stated that economic considerations and effects on trade and commerce do not, by themselves, justify restrictions on the right to strike.

Serious social disruption may support measures designed to preserve essential functions or maintain a minimum service in appropriate circumstances. The international standards set a substantially higher threshold for terminating a lawful strike and imposing compulsory arbitration, principally limiting such intervention to essential services in the strict sense, acute national or local crises and other narrowly defined circumstances. Proposed section 107 does not require serious social disruption to reach those thresholds before a full resumption of operations and binding dispute resolution may be ordered.¹

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¹ Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Giving globalization a human face*, General Survey, Report III (Part 1B), 101st ILC Session (2012), paras. 132, 136–138, and 153, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf; ILO, *Compilation of Decisions of the Committee on Freedom of Association*, available at https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:70001:0::NO:: (hereinafter, ILO, CFA *Compilation of Decisions*), paras. 791, 816–818, 848, 851, and 920; UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the Russian Federation*, E/C.12/RUS/CO/5, para. 20, https://digitallibrary.un.org/record/704689/files/E_C.12_RUS_CO_5-EN.pdf. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) are supervisory bodies of the International Labour Organization (ILO) that monitor States’ compliance with international labour standards. The CEACR is an independent body of legal experts that examines the application of ILO Conventions and Recommendations in law and practice, issuing observations and guidance on compliance. The CFA is a tripartite body composed of representatives of governments, employers and workers, which examines

1. BACKGROUND AND CURRENT CANADIAN CONTEXT

The current section 107 of the Canada Labour Code gives the Minister a broadly worded power, where the Minister considers it expedient, to take measures likely to maintain or secure industrial peace and promote conditions favourable to the settlement of industrial disputes, including referring questions to the Canada Industrial Relations Board (CIRB) or directing the Board to take measures the Minister considers necessary.²

On 21 September 2026, the Government introduced Bill C-39, the *Building Canada Strong Act*.³ Among other labour-relations amendments, Bill C-39 proposes to recast section 107 by expressly identifying the conditions under which the Minister may direct the CIRB to order the resumption or continuation of operations or duties, extend a collective agreement, or impose a binding method of resolving outstanding issues. The Government describes the proposal as a way to “establish a clearer and more transparent framework for the use of these authorities in the exceptional circumstance of a labour dispute that threatens to have significant national impacts.”⁴

1.1 The proposed trigger

The proposed subsection 107(2) would permit such a direction only after the Minister has considered the report of a special mediator and is of the opinion that a strike or lockout already underway “adversely affects or may adversely affect the national interest”. Proposed subsection 107(3) would permit the Minister, in forming that opinion, to take into account “any relevant consideration, including:

- a) whether the strike or lockout has or may have any significant impact on the Canadian economy;
- b) whether the strike or lockout is causing or may cause any serious social disruption; and
- c) whether the Minister’s direction to the Board has any impact on the freedom of association.”

This provision would apply expressly to a strike or lockout that is “not prohibited” under the Canada Labour Code. Crucially, therefore, it creates a mechanism for terminating or neutralising otherwise lawful industrial action after it has commenced. The grounds on which that power may be exercised are highly relevant because the two principal considerations identified in subsection 107(3) do not correspond in the same way to the categories recognized by the international supervisory bodies.

complaints concerning violations of freedom of association and the right to organize, including in countries that have not ratified the relevant ILO conventions.

The Committee on Economic, Social and Cultural Rights (CESCR) is a body of independent experts responsible for monitoring states’ implementation of the ICESCR. The ICESCR protects a range of rights, including the right to work, just and favourable conditions of work, trade union rights, social security, health and education. The CESCR reviews reports submitted by states, issues concluding observations and recommendations, and adopts general comments to clarify the content and scope of the rights protected under the ICESCR.

² *Canada Labour Code*, RSC 1985, c L-2, s 107.

³ Bill C-39, *An Act Respecting Certain Measures to Strengthen the Economy*, 1st Sess, 45th Parl, 2026, cl 322.

⁴ Government of Canada, Bill C-39 Introduction, [backgrounder](https://www.canada.ca/en/one-canadian-economy/news/2026/09/government-of-canada-introduces-legislation-to-transform-how-canada-builds.html), 21 September 2026, Part 3.2 (Addressing entrenched disputes with significant national impacts), especially the description of the proposed preconditions and available directions; Government of Canada, Government of Canada introduces legislation to transform how Canada builds, 21 September 2026, <https://www.canada.ca/en/one-canadian-economy/news/2026/09/government-of-canada-introduces-legislation-to-transform-how-canada-builds.html>.

The economic-impact ground is broader than the ILO standards governing restrictions on strike action, which do not recognise economic significance, effects on trade or commerce, or the general or national interest as sufficient grounds for terminating a lawful strike. “Serious social disruption” raises a different issue. The considerations of the ILO supervisory bodies discussed below recognise that the effects of a stoppage on the population may justify continuity measures, including a minimum service in defined circumstances, while reserving the termination of strike action for considerably narrower situations. The proposed section does not incorporate that distinction into the conditions governing back-to-work orders and compulsory arbitration.

1.2 Recent uses of section 107

Since 2023, the federal government has referred ten disputes to the Board under section 107; nine of the ten were used to end or pause a strike or lockout and/or impose arbitration.⁵ The most prominent interventions have involved transportation and public services. In August 2024, after shutdowns at two major freight railways, the Minister directed the Board to restore service and impose binding arbitration, citing the effects of the impasse on all Canadians.⁶ Similarly, in November 2024, the Minister used section 107 in disputes at West Coast and Quebec Ports, directing operations to resume and outstanding terms to be settled by arbitration.⁷ In December 2024, a referral concerning a Canada Post strike led the Board to order employees back to work.⁸ Most recently, when an Air Canada-CUPE flight attendant strike began in August 2025, the Minister directed the Board to restore airline operations and impose binding arbitration, citing disruption to travellers and shipments of critical goods, including pharmaceuticals and organ tissue.⁹

2. THE APPLICABLE INTERNATIONAL FRAMEWORK

Canada has ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 on the Right to Organise and Collective Bargaining. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) have developed a substantial body of supervisory standards concerning the right to strike, essential services, minimum services, back-to-work orders and compulsory arbitration.

Canada is also a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 8(1)(d) recognizes the right to strike, subject to its exercise in conformity with national law; Article 8(2) permits lawful restrictions for members of the armed forces, police and administration of the State; and Article 8(3) provides that a State party to ILO Convention No. 87 may not legislate or apply the law so as to prejudice the guarantees provided for in that Convention. Article 4 supplies the Covenant’s general limitation

⁵ Employment and Social Development Canada, “HUMA committee briefing binder: Appearance by the Minister of Job and Families” (5 February 2026), <<https://www.canada.ca/en/employment-social-development/corporate/reports/committe-binders/2026-fev-5-huma-hadju.html>>.

⁶ Employment and Social Development Canada, “Question Period Note: SECTION 107 REFERRALS” (4 Oct 2024), <https://search.open.canada.ca/qpnotes/record/esdc-edsc%2CL LSDec2024 003>>.

⁷ Canada, Industrial Inquiry Commission on West Coast Ports, *Report and recommendations of the Industrial Inquiry Commission, delivered to the Honourable Steven MacKinnon, Minister of Employment, Workforce Development and Labour, Pursuant to Section 108 of the Canada Labour Code on Longshoring Labour Disputes at Canada’s West Coast Ports* (2025) at s 4.3.a <https://www.canada.ca/en/employment-social-development/programs/labour-relations/reports/industrial-inquiry-commission-longshoring-west-coast-ports.html>.

⁸ Canada, Industrial Inquiry Commission, *Report of the Industrial Inquiry Commission Appointed Under Section 108 of the Canada Labour Code* (2025) <https://www.canada.ca/en/employment-social-development/programs/labour-relations/reports/industrial-inquiry-commission-canada-post.html>.

⁹ Canada, Employment and Social Development Canada, *Statement from Minister Hajdu*, (Statement) (Gatineau: ESDC 2025) <https://www.canada.ca/en/employment-social-development/news/2025/08/statement-from-minister-hajdu.html>.

framework.¹⁰ The implementation of the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights (CESCR), which issues observations and recommendations after reviewing reports submitted by State Parties, and adopts general comments to clarify the content and scope of the rights protected under the Covenant.

All these supervisory pronouncements are not domestic Canadian judgments, but they are the principal international materials for assessing Canada's obligations concerning freedom of association under the ILO instruments and the ICESCR.

While Canadian courts do not treat the findings of the ILO supervisory bodies as binding, they have given those materials significant interpretive weight when determining the scope of freedom of association under section 2(d) of the Charter and assessing labour legislation against that guarantee. In particular, the Supreme Court of Canada has relied on the jurisprudence of the CEACR and CFA as part of a purposive interpretation of section 2(d), has stated expressly that ILO supervisory interpretations, while not binding, "shed light" on the scope of the Charter guarantee, and has subsequently described CFA decisions as carrying "considerable persuasive weight".¹¹

2.1 The 2026 ICJ advisory opinion

In May 2026, the International Court of Justice (the "ICJ") concluded that the right to strike is protected under ILO Convention No. 87.¹² It also noted that this conclusion "does not entail any determination on the precise content, scope or conditions for the exercise of that right".¹³ In its opinion, the ICJ observed that the pronouncements of the ILO supervisory bodies – in particular the CEACR and the CFA – while not binding upon the Court itself, must be ascribed "great weight as a supplementary means of interpretation of Convention No. 87." The CEACR's and CFA's pronouncements, thus, remain highly relevant to the assessment of Bill C-39. As noted above, Canada has ratified Convention No.87, which requires that a ratifying State's domestic law neither impair its guarantees nor be applied in a way that impairs them (Article 8(2)). Importantly, as discussed in the Sections below, the ILO supervisory bodies distinguish the ordinary consequences of a strike from the grounds for prohibiting one.

3. CEACR: RESTRICTIONS ON STRIKES AND COMPULSORY ARBITRATION

3.1 Essential services are defined strictly

The CEACR's 2012 General Survey, *Giving globalization a human face*, defines "essential services, for the purposes of restricting or prohibiting the right to strike," as only those "the interruption of which would endanger the life, personal safety or health of the whole or part of the population". The Committee stresses that the classification of a service as "essential" is not "absolute in nature": a non-essential service can sometimes become essential, for instance because of the duration or extent of a particular strike, "or as a

¹⁰ International Covenant on Economic, Social and Cultural Rights, arts. 4, 8(1)(d), 8(2) and 8(3), Office of the UN High Commissioner for Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹¹ See, for instance, *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 SCR 391 at paras. 69-76, especially para. 76 ("While not binding, they shed light on the scope of s. 2(d) of the Charter as it was intended to apply to collective bargaining."); *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4, [2015] 1 SCR 245 at paras. 62, 67-69, especially para. 69 ("Though not strictly binding, the decisions of the Committee on Freedom of Association have considerable persuasive weight [...]"). See also *Dunmore v Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 SCR 1016 at paras 13, 16 and 27.

¹² *Right to Strike Under ILO Convention No. 87*, ICJ (2026) Advisory Opinion at para. 139. The Opinion is available at <https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-00-en.pdf>

¹³ *Ibid.*, para. 140.

function of the special characteristics of a country (for example, an island State)”.¹⁴ Notably, however, the applicable test remains one of danger to life, safety or health.

In the 2012 General Survey, the CEACR criticizes legislation that defines essential services too broadly, leaves excessive discretion to the authorities, or permits strike prohibitions by generic reference to potential economic consequences, public order, or the “general or national interest”. It states that provisions of that kind are not compatible with the principles relating to the right to strike.¹⁵

The General Survey also identifies many services that are important to the economy and the public but are not, as such, essential services in the strict sense. These are, for instance, railways, transport and public transport services, air transport and civil aviation, port services and authorities and loading and unloading services for ships, bank services, postal services, municipal services and refuse collection.¹⁶ By contrast, services that may fall within the strict category include air traffic control, emergency and firefighting services, health and ambulance services, water and electricity, prisons and certain security services.¹⁷

3.2 Minimum service as an alternative to banning a strike

Where a complete prohibition is not justified, the CEACR treats a negotiated minimum service as the appropriate less restrictive mechanism in defined situations: in essential services in the strict sense; in non-essential services where the magnitude and duration of a stoppage could generate an acute crisis threatening normal conditions of existence; and in public services of fundamental importance. In these cases, according to the CEACR, the minimum service must remain genuinely minimal, confined to operations strictly necessary for basic needs or the minimum requirements of the service while preserving the effectiveness of the industrial pressure. Workers’ organizations must be able to participate in determining it, and disputes over its scope should be entrusted to a joint or independent body rather than determined unilaterally by government.¹⁸

These principles are essential to the assessment of proposed section 107. They show that international labour standards do not generally treat the right to strike as absolute and also recognize that disruption to an important service can justify continuity obligations short of ending the strike. Even where continuity of certain activities may legitimately be required, the CEACR’s approach favours measures that preserve effective strike action to the greatest extent possible. A full return-to-work order coupled with compulsory settlement, which the new section 107 would facilitate, therefore, requires a justification going beyond the serious economic or social consequences that may support less invasive measure, such as a minimum-service requirement.

3.3 Acute crisis, compensatory guarantees, and compulsory arbitration

The CEACR recognizes that strike restrictions may also be justified during an acute national or local crisis, but only exceptionally, for a limited period and to the extent necessary to meet the requirements of the situation. Its treatment of the crisis exception is correspondingly narrow. An “acute crisis” is not synonymous with ordinary economic difficulty, substantial inconvenience, or disruption inherent in industrial action.¹⁹

Where the right to strike is legitimately restricted or prohibited, the CEACR requires compensatory guarantees, such as impartial conciliation and, where necessary, arbitration procedures trusted by the parties and involving workers and their organizations.²⁰

¹⁴ CEACR, Giving globalization a human face, General Survey, cited n.1, para. 131.

¹⁵ Ibid., para. 132.

¹⁶ Ibid. para. 134.

¹⁷ Ibid. para. 135.

¹⁸ Ibid. paras. 136-138.

¹⁹ Ibid., para. 140.

²⁰ Ibid., para. 141.

Paragraph 153 of the 2012 General Survey addresses compulsory arbitration imposed to terminate a collective dispute and a strike directly. The CEACR states that compulsory arbitration is acceptable where both parties agree to it, or where the strike itself may legitimately be restricted or prohibited: for public servants exercising authority in the name of the State, essential services in the strict sense, or an acute national or local crisis, in the latter case only for a limited period and “to the extent necessary to meet the requirements of the situation.” It adds that the mere existence of a protracted dispute or failed conciliation is not, in itself, sufficient to justify compulsory arbitration.²¹

The narrow exception arises after protracted and fruitless negotiations where it is obvious that the deadlock will not be broken without some initiative by the relevant authorities.²² Bill C-39 does not require that the special mediator’s unsuccessful efforts establish that exceptional deadlock, which raises additional questions about its compatibility with international labour standards.

Crucially, the CEACR also emphasizes that systematic recourse to compulsory arbitration “is tantamount in practice to a general prohibition of strikes, which is incompatible with the Convention” and that arbitration imposed by the authorities at the request of one party “is generally contrary to the principles of voluntary collective bargaining.”²³

4. CFA: BACK-TO-WORK ORDERS, ECONOMIC IMPACT AND COMPULSORY ARBITRATION

4.1 Economic considerations are not a sufficient justification

The CFA’s Compilation of Decisions states in categorical terms that economic considerations should not be invoked as a justification for restrictions on the right to strike.²⁴ Significantly for the assessment of the proposed section 107, the authorities cited for that proposition include Case No. 2894 (Canada), concerning federal legislation that ended a Canada Post strike and referred the dispute to compulsory and binding arbitration.²⁵

The same principle appears in the CFA’s essential-services analysis. The Committee has stated that the economic impact of industrial action and its effect on trade and commerce do not, by themselves, render a service “essential” so as to justify deprivation of the right to strike.²⁶ One of the underlying authorities is another Canadian case, Case No. 2983.²⁷ The CFA has likewise held that even serious adverse consequences to third parties do not justify a strike restriction unless the consequences reach the requisite level of danger to life, personal safety or health.²⁸

4.2 Compulsory arbitration ending a strike is exceptional

The CFA’s general rule on compulsory arbitration closely tracks the CEACR. Compulsory arbitration ending a collective dispute and strike is acceptable when requested by both parties, or where the strike itself may lawfully be restricted or prohibited, notably in the public service for officials exercising authority in the name of the State, in situations of acute national crisis, or in essential services in the strict sense, i.e. those services whose interruption would endanger the life, personal safety or health of all or part of the population. Outside those circumstances, according to the CFA, compulsory arbitration that prevents strike action is incompatible

²¹ Ibid., para. 153.

²² Ibid., para. 153.

²³ Ibid., para. 154.

²⁴ ILO, CFA Compilation of Decisions, cited n. 1, para. 791.

²⁵ See Case No. 2894 (Canada), https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3112074.

²⁶ ILO, CFA Compilation of Decisions, cited n. 1, para. 848.

²⁷ Case No. 2983 (Canada), https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3144110

²⁸ ILO, CFA Compilation of Decisions, cited n. 1, para. 851.

with trade unions' right to organize their activities freely.²⁹ The Compilation cites, among other authorities, Canadian Cases Nos. 2894, 2983 and 3107 for these propositions.³⁰ The CFA further states that compulsory arbitration imposed by labour authorities after a dispute remains unsettled can substantially restrict unions' freedom to organize their activities and may amount to a prohibition of strike action.³¹

The CFA also emphasizes institutional safeguards. Arbitration should be genuinely independent, and responsibility for suspending a strike on grounds such as national security or public health should not rest with government but with an independent body enjoying the confidence of the parties. A minister may of course have a role in labour relations, but where the consequence is the compulsory suspension of lawful collective action, the ILO jurisprudence is wary of placing the decisive substantive judgment in the political executive.³²

4.3 The threshold for prohibition and back-to-work orders

For prohibitions grounded in essentiality, the CFA asks whether there is a clear and imminent threat to the life, personal safety or health of the whole or part of the population. A service that is not normally essential may become so because of the duration or scope of a strike, but only if that danger emerges.³³

The CFA's treatment of back-to-work requirements is correspondingly precise. It accepts that a back-to-work order may be justified where a total and prolonged strike in a vital sector could endanger life, health or personal safety, particularly where the order is confined to the staff necessary to avert that danger. Outside such cases, the Committee states clearly that a requirement to return to work is contrary to freedom-of-association principles.³⁴ Again, a Canadian case is cited among the authorities for this proposition.³⁵

4.4 Transportation and aviation: minimum service rather than automatic prohibition

The CFA specifically distinguishes transportation from essential services in the strict sense. Passenger and commercial-goods transport may be a public service of primary importance in which a minimum service can be justified, but that does not make the entire sector essential for purposes of banning a strike. In airport cases, the CFA has treated air traffic control, rather than air transport as a whole, as the service that may qualify as essential in the strict sense.³⁶

The minimum service itself must remain proportionate. The CFA states that it should be limited to operations necessary to satisfy basic needs or minimum service requirements and must not be defined so broadly that the strike becomes ineffective. Workers' and employers' organizations should participate in setting it, with disagreements decided by an independent body.³⁷

5. ICESCR ARTICLE 8 AND CESCPR PRACTICE

The Committee on Economic, Social and Cultural Rights (CESCR), the UN body that monitors implementation of the International Covenant on Economic, Social and Cultural Rights, has not adopted a comprehensive General Comment devoted to the right to strike under Article 8. Its strike-specific standards therefore emerge primarily from concluding observations, read together with the treaty text and the

²⁹ ILO, CFA Compilation of Decisions, cited n. 1, paras. 816-818.

³⁰ Case No. 2894 (Canada), cited n. 25; Case No. 2983 (Canada), cited n. 27; Case No. 3107 (Canada), https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4313399.

³¹ ILO, CFA Compilation of Decisions, cited n. 1, para. 822.

³² Ibid., paras. 823 and 825.

³³ Ibid., paras. 836 and 837.

³⁴ Ibid., paras. 917 and 920.

³⁵ Case No. 2467 (Canada), https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2909904.

³⁶ ILO, CFA Compilation of Decisions, cited n. 1, paras. 840, 842, and 893.

³⁷ Ibid., paras. 874 and 882.

Committee’s general approach to limitations under Article 4. While the CESCER record is less detailed than the ILO materials, compulsory arbitration and blanket strike restrictions are clearly treated as exceptional also in this framework.

5.1 Compulsory arbitration: the Russia concluding observations

The most direct CESCER authority is its concluding observations on the Russian Federation. In paragraph 20 of E/C.12/RUS/CO/5, the Committee expressed concern about compulsory arbitration in services designated by federal law and recommended that compulsory arbitration be restricted to essential services.³⁸ That formulation is markedly narrower than a power triggered by economic significance, social disruption or a general conception of the national interest as in the proposed section 107.

5.2 Essential services and the effective exercise of the right to strike

The Committee has repeatedly objected to definitions of essential services that sweep too broadly. In its concluding observations on the Republic of Korea, it expressed concern about restrictive criteria for lawful strike action and a broad definition of essential services, and recommended narrowing the definition so as to ensure the effective exercise of the right to strike.³⁹ In its concluding observations on Estonia, it recommended that civil servants who do not provide essential services be allowed to exercise the right to strike under Article 8, expressly referring to ILO Convention No. 87.⁴⁰

Article 8(3) strengthens the relevance of the ILO standards for Canada. It expressly prevents a State party to Convention No. 87 from legislating or applying legislation so as to prejudice the guarantees provided by that Convention. Article 4, moreover, requires any limitation on Covenant rights to be determined by law, compatible with the nature of the right and directed solely to promoting the general welfare in a democratic society. In its broader Article 4 jurisprudence, the CESCER has also used proportionality and least-restrictive-means reasoning, and has recalled that, under Article 4, “limitations must respect the minimum core obligations of the right, and must be proportionate to the aim pursued. This means that where there are several means reasonably capable of achieving the legitimate aim of the limitation, the one that is least restrictive to economic, social and cultural rights must be selected, and the burdens imposed on the enjoyment of the right should not outweigh the benefits of the limitation.”⁴¹

6. ASSESSMENT OF THE PROPOSED SECTION 107

6.1 The substantive trigger is materially broader than the recognized exceptions

The principal incompatibility of the proposed section 107 is structural. Under the new provision, an otherwise lawful strike may be terminated and replaced by binding dispute resolution if, after considering a mediator’s report, the Minister concludes that the stoppage adversely affects or may adversely affect the “national interest”. Arguably, the ILO supervisory framework proceeds in the very opposite direction: in particular, the CEACR and CFA first ask whether the strike falls within one of a limited set of situations in which strike action itself may legitimately be prohibited or restricted. Outside those circumstances, substantial economic or public effects may sometimes justify proportionate measures such as minimum service requirements, but not the complete suppression of the strike.

³⁸ CESCER, *Concluding observations on the Russian Federation*, cited n. 1, para. 20.

³⁹ CESCER, *Concluding observations on the fourth periodic report of the Republic of Korea*, E/C.12/KOR/CO/4 (2017), paras. 38-39, https://digitallibrary.un.org/record/1318566/files/E_C-12_KOR_CO_4-EN.pdf.

⁴⁰ CESCER, *Concluding observations on the third periodic report of Estonia*, E/C.12/EST/CO/3 (2019), paras. 26-27, https://digitallibrary.un.org/record/3798153/files/E_C-12_EST_CO_3-EN.pdf.

⁴¹ CESCER, *General Comment No. 25 on science and economic, social and cultural rights*, E/C.12/GC/25 (2020), para. 21 <https://docs.un.org/en/E/C.12/GC/25>. This General Comment concerns Article 15, not Article 8, and is relied on here only for the Committee’s general approach to Article 4 limitations.

The risk of the new section being at odds with the ILO principles of freedom of association is, therefore, concrete and visible. While the CEACR expressly identifies the “general or national interest” and potential economic consequences as grounds that are too broad when used to justify strike prohibitions, the proposed subsection 107(3) would make those very considerations part of the statutory pathway to compulsory resumption of work and binding settlement.⁴²

The breadth of the proposed trigger is apparent in the two considerations expressly identified in subsection 107(3). In particular, significant economic impact is a factor that the ILO supervisory bodies have expressly rejected as sufficient per se to justify suppressing strike action. Serious social disruption, instead, can justify continuity measures in appropriate circumstances but does not by itself satisfy the narrower conditions governing the termination of a lawful strike. Sections 6.2 and 6.3 address these two grounds separately.

6.2 Economic impact cannot operate as an independent gateway to compulsory termination

Proposed paragraph 107(3)(a) would expressly allow the Minister to consider whether a strike “has or may have any significant impact on the Canadian economy”. This factor is hard to reconcile with the supervisory practice of both bodies. As just mentioned, the CEACR rejects potential economic consequences as a sufficient basis for strike prohibition, while the CFA clearly states that “economic consideration should not be invoked as a justification for restrictions on the right to strike” and that effects on trade and commerce do not, by themselves, make a service essential. Moreover, the CFA has already applied these propositions in cases concerning Canada.⁴³

Importantly, economic consequences may justify measures aimed at preserving essential functions or preventing irreversible harm to third parties, including appropriately defined minimum-service requirements in strategically important sectors. They do not, however, make a service essential in the strict sense merely because a strike affects trade, commerce or the wider economy. The CFA has thus treated minimum-service arrangements as the appropriate response in such circumstances, rather than compulsory arbitration or other measures that extinguish the right to strike.⁴⁴ Therefore, a statutory criterion that makes significant economic impact a basis for terminating lawful strike action is at odds with that approach.

6.3 “Serious social disruption” is broader than the test for prohibiting a strike

Proposed paragraph 107(3)(b) raises a similar problem. Serious social disruption can plainly be relevant to a government’s response. The ILO bodies recognize, for example, that a sufficiently serious and prolonged stoppage in a public service may support a minimum-service requirement. The threshold for ending the strike is narrower. “Public services of fundamental importance”, and non-essential services “in which the magnitude and duration of a stoppage threaten normal conditions of existence,” may justify a minimum-service requirement, but they do not justify termination of the strike on that basis alone.⁴⁵

The proposed language does not meet this standard. It permits “serious social disruption” to contribute to a conclusion that the national interest is adversely affected and thus to support a full resumption order and binding dispute resolution. A scheme more closely aligned with ILO standards would distinguish explicitly between disruption that warrants a minimum service and the exceptional danger that warrants termination of the strike itself.

The Government’s proposed framework does contemplate consideration of alternatives and mitigation measures. The Special Mediator would assess the outstanding issues, the parties’ positions and participation, and the prospects of reaching a negotiated settlement, while the subsequent national-impact assessment

⁴² CEACR, *Giving globalization a human face*, General Survey, cited n.1, para. 132.

⁴³ Ibid.; ILO, CFA Compilation of Decisions, cited n. 1, paras. 791 and 848, with para. 791 citing Case No. 2894 (Canada), and para. 848 citing Case No. 2983 (Canada). The cases are cited at n. 25 and 27 respectively.

⁴⁴ See, for instance, CFA Compilation of Decisions, cited n. 1, paras. 896 and 897.

⁴⁵ CEACR, *Giving globalization a human face*, General Survey, cited n.1, para. 136.

would consider, among other factors, the availability of alternatives or mitigation measures.⁴⁶ Those features do not incorporate the specific safeguards that the CEACR requires for minimum-service arrangements. Under the Committee’s approach, a minimum service must be limited to operations strictly necessary to meet basic needs or the minimum requirements of the service while preserving the effectiveness of strike action; workers’ organizations must be able to participate in defining it; and disagreements over its scope should be decided by a joint or independent body enjoying the confidence of the parties, rather than unilaterally by government.⁴⁷ Bill C-39, instead, does not make the inadequacy of a properly designed minimum-service arrangement a condition for ordering a full resumption of operations, nor does it prescribe these requirements for the scope, participation in, or independent determination of such an arrangement. Again, it is hard to reconcile this approach with applicable international labour standards.

6.4 The prospective language lowers the threshold further

The proposed provision is also prospective. It applies where a strike “may adversely affect” the national interest, and the listed factors include effects that the strike “may have” on the economy or “may cause” by way of social disruption. Notably, preventive action is not necessarily inconsistent with international standards: the essential-services test itself can respond to an imminent threat. But where prohibition is justified on essentiality grounds, the CFA’s approach is to require a “clear and imminent” threat to life, personal safety or health.⁴⁸ A general possibility of future economic or social harm is substantially less exacting.

6.5 A special mediator and failed bargaining do not cure an overbroad substantive trigger

The proposed special-mediator process is a meaningful procedural safeguard and may improve the prospects of voluntary settlement. It does not, however, answer the substantive compatibility problem. The CEACR specifically states that a protracted dispute and the failure of conciliation are not, in themselves, sufficient reasons for compulsory arbitration. A mediator’s report may provide an evidentiary basis for decision-making, but international standards still require the ultimate legal ground for terminating the strike to fall within the narrowly recognized exceptions. Bill C-39 is clearly not confined to those exceptions.⁴⁹

6.6 Consideration of freedom of association is not equivalent to a substantive limit

Proposed paragraph 107(3)(c) requires consideration of whether the Minister’s direction has any impact on freedom of association. That is relevant and preferable to a scheme that ignores the right entirely. But the ILO approach does not treat freedom of association as one factor to be placed in an open-ended balance against economic impact and social disruption. It establishes antecedent substantive limits on when the right may be displaced. A requirement that the Minister “consider” the impact on freedom of association therefore does not by itself narrow the power to the circumstances in which compulsory termination is internationally accepted.

6.7 Ministerial determination and independent decision-making

The allocation of decision-making power under the new section 107 also raises concerns. Under the proposed wording, the decisive judgment that the strike adversely affects or may adversely affect the national interest is the Minister’s. The CIRB then receives a direction to take specified measures. The CFA has stated that responsibility for suspending a strike on grounds such as national security or public health should not rest

⁴⁶ Canada, “Bill-C-39 Introduction” (22 September 2026), online: Government of Canada <<https://www.canada.ca/en/one-canadian-economy/news/2026/09/cabinet-directive.html>> at sec 3.2.1 and 3.2.2.

⁴⁷ CEACR, *Giving globalization a human face*, General Survey, cited n.1, para. 136-138.

⁴⁸ ILO, CFA Compilation of Decisions, cited n. 1, para. 836.

⁴⁹ CEACR, *Giving globalization a human face*, General Survey, cited n.1, para. 153.

with government, but with an independent body enjoying the parties' confidence, and that compulsory arbitration should be truly independent.⁵⁰

It also recognizes that governments may suspend a strike on national security or public health grounds, provided those grounds are applied in good faith and according to their ordinary meaning.⁵¹ The national-interest threshold in the Bill, however, remains significantly less demanding than those standards.

Importantly, the involvement of the CIRB does not seem an adequate institutional safeguard in this context. The proposed text appears to leave the threshold decision and the choice to activate the statutory power with the Minister. The Board is then left to implement the decision of the Minister rather than independently determining whether the stringent conditions for terminating a strike exist. This structure remains inextricably in tension with the CFA's institutional guidance.

6.8 Voluntary collective bargaining under Convention No. 98

Crucially, compulsory arbitration directly affects the principle of voluntary collective bargaining under ILO Convention No. 98. By transferring the determination of unresolved bargaining issues from the parties to a binding third-party process, it limits their capacity to determine terms and conditions of employment through negotiation. Accordingly, the CFA accepts authority-imposed arbitration only within narrowly defined circumstances, corresponding broadly to those in which strike action itself may legitimately be restricted. The Canadian cases cited in the CFA Compilation are especially relevant in showing how those limits apply in practice.⁵²

7. CONCLUSION

The proposed amendment contains certain safeguards that are absent from an entirely discretionary back-to-work power. While relevant, those safeguards do not resolve the central incompatibility with the international labour standards. Proposed section 107 would expressly authorize the termination of an otherwise lawful strike and the imposition of binding dispute resolution based on an adverse or potentially adverse effect on the "national interest", with significant economic impact and serious social disruption identified as relevant considerations. The ILO supervisory bodies have repeatedly drawn the permissible boundary more narrowly. In particular, they reserve compulsory arbitration ending a strike for cases of agreement by the parties or circumstances in which the strike itself may legitimately be restricted or prohibited, principally essential services in the strict sense, public servants exercising authority in the name of the State, and acute national or local crises subject to strict necessity and temporal limits.⁵³

The ILO supervisory bodies also distinguish full prohibition from a minimum-service obligation and expressly reject economic consequences, trade effects, and the general or national interest as sufficient stand-alone grounds for suppressing strike action. CESCER practice under Article 8 of the International Covenant on Economic, Social and Cultural Rights is less elaborated, but its direct statement that compulsory arbitration should be restricted to essential services, together with Article 8(3)'s express protection of Convention No. 87 guarantees, reinforces the same conclusion.⁵⁴

Accordingly, the proposed section 107 is arguably incompatible with the limits developed in ILO supervisory jurisprudence and is difficult to reconcile with the CESCER's interpretation and application of Article 8 of the

⁵⁰ ILO, CFA Compilation of Decisions, cited n. 1, paras. 823 and 825.

⁵¹ ILO, CFA Compilation of Decisions, cited n. 1, para. 916.

⁵² ILO, CFA Compilation of Decisions, cited n. 1, paras. 816, 819 and 822. See also Case No. 2894 (Canada), cited n. 25; Case No. 2983 (Canada), cited n. 27; Case No. 3107 (Canada), cited n. 30.

⁵³ CEACR, *Giving globalization a human face*, General Survey, cited n.1, para. 153.

⁵⁴ See CESCER, *Concluding observations on the Russian Federation*, cited n. 1, para. 20. See also CEACR, *Giving globalization a human face*, General Survey, cited n.1, para. 132; ILO, CFA Compilation of Decisions, cited n. 1, paras 791 and 848.

ICESCR. A framework designed to conform more closely to those standards would need, at minimum, to confine compulsory termination of a lawful strike to the internationally recognized exceptional circumstances; separate those circumstances from situations warranting only a minimum service; apply necessity and proportionality expressly; and ensure independent determination of any disputed requirement to suspend industrial action. The safeguards under Bill C-39 currently fall short of these requirements.