

**Employment and Social Development Canada's consultation on
modernizing the federal labour relations framework**

Unifor Submission

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Introduction

1. Unifor is Canada's largest private sector union, representing approximately 320,000 workers across every major area of the economy.¹ It is also the largest union in the federally regulated private sector ("FRPS"), including road, rail, airline and marine transportation, media, aerospace, energy, and telecommunications. Nearly 70,000 Unifor members work under federal jurisdiction.
2. These are Unifor's submissions in response to Employment and Social Development Canada's consultation on modernizing the federal labour relations framework.
3. Unifor bargains a collective agreement nearly every day of the week across the country. The vast majority of these negotiations, including those in the FRPS, conclude with a successfully bargained collective agreement. It is Unifor's view that, for the most part, the existing structures work.
4. In the FRPS, Unifor conducts its bargaining within the essential services framework in section 87.4 of the *Canada Labour Code* ("Code"). The maintenance of activities scheme in the Code reflects the importance and necessity of protecting the right to strike. Section 87.4 establishes a justifiably high threshold for establishing that services are "essential" and must be continued during a strike or lockout. This is because Parliament has recognized that any restriction on the right to strike is detrimental to the ability of unions to bargain effectively. For this reason, the Board has repeatedly stated that any abridgement of the right to strike must be to the minimum level required to cautiously protect the health of safety of the public.²
5. ESDC's consultation document, "Building Canada Strong for All, Powered by Canada's Workers," is exceptionally broad, covering 13 general themes and more than 60 questions. Each theme is open-ended and could reasonably warrant a separate consultation. The document invites Unifor to comment on fundamental processes and structures at the core of Canada's federal

¹ See "Unifor by the Numbers" (<https://www.unifor.org/sites/default/files/documents/2026-unifor-by-the-numbers.pdf>).

² NAV CANADA, [2002 CIRB 168](#) at para 228.

labour regime, including highly contested issues involving constitutionally protected rights. The limited time provided to respond (April 17, 2026 to May 18, 2026 – later extended to May 25, 2026) is wholly insufficient for meaningful engagement with these foundational questions.

6. The underlying premise of this consultation document, that the national interest requires that “certainty” should be prioritized over free collective bargaining and that strikes are to be avoided at all costs, is fundamentally flawed. The Supreme Court of Canada has affirmed that the right to strike is an essential part of a meaningful collective bargaining process. The preamble to the Code describes the Parliament of Canada’s commitment to the practice of free collective bargaining. It is Unifor’s view that the existing legislative scheme adequately protects the public from serious harm resulting from contentious labour disputes. Any amendment to the Code which would restrict the right to strike and thereby the right to bargain collectively in the name of “national interest” ought to be rejected as constitutionally unsound and an affront to the fundamental rights of workers. We note that the recent Advisory Opinion issued by the International Court of Justice in The Hague also affirms that the right to strike is a protected activity of trade unions under international law, and serves as a very timely reminder that workers’ rights, and in particular the right to strike, are fundamental human rights that cannot be tampered with.

1. Revising the timelines for direct bargaining

7. Unifor’s position is that it is not necessary to alter the direct bargaining timelines in the existing bargaining process. Unions and employers regularly demonstrate the ability to conclude collective bargaining within the existing timelines.
8. Currently, either the union or employer may initiate bargaining within four months of the expiry of a collective agreement. The parties are required to meet within 20 days of the notice to bargain being served, unless otherwise mutually agreed. The current four-month period in which parties can serve a notice to bargain and commence bargaining a renewal collective agreement is sufficient. We see no need for an additional direction about how or when bargaining should begin after a notice to bargain is delivered.

9. The role of the Federal Mediation and Conciliation Service (“FMCS”) at this stage of bargaining should be limited. Unifor may support a requirement that FMCS receive a copy of every notice to bargain. This might assist FMCS to identify opportunities to assist the parties at later stages.

2. Revising the conciliation and cooling off timelines

10. In Unifor’s view, it is not necessary to revise the current 60-day conciliation period or the 21-day cooling-off period. Unions and employers that are engaged in good faith bargaining have the necessary tools to reach a settlement when they are bargaining a renewal agreement. They can agree to mutually extend conciliation after 60 days, and delay a strike or lockout, to continue their negotiations. In some circumstances, a conciliation officer may encourage both parties to consent to an extension and then work with the parties to reach an agreement within the extended conciliation period.
11. Extending conciliation periods without the consent of both parties will, in Unifor’s view, result in employers delaying meaningful bargaining. The Code imposes a duty to bargain in good faith on both unions and employers. It is Unifor’s experience that the Canada Industrial Relations Board (“Board”) cannot respond quickly to complaints about an employer’s breach of its obligations to bargain in good faith. The effect is that an employer can delay bargaining with little immediate recourse. Ensuring that the CIRB has the resources necessary to deal quickly with unfair labour practice complaints would lead to improved bargaining outcomes.

3. Revising the timeline for notice of strike or lockout

12. The current 72-hour strike or lockout notice requirement is also more than adequate. A longer period of notice is neither necessary nor justified. There needs to be finality in the bargaining process, and a 72-hour notice of a possible strike or lockout is sufficient. We note that the 72-hour notice does not commit the party to act on the notice by initiating the intended strike or lockout. The parties can still reach an agreement prior to the start of a labour dispute or may agree to delay the start of a strike or lockout in order to continue bargaining.

4. Creating a new special mediator role

13. Part 4 of the Consultation Document describes a proposed new special mediator process. This is based on a recommendation of the 2025 Industrial Inquiry Commission on West Coast Ports.
14. Elsewhere in this submission, Unifor proposes that the Government consider improved mechanisms to secure the settlement of first collective agreements, including an enhanced mediation process modelled on the British Columbia experience. The following comments on a special mediator role should be read as complementing that proposal.
15. Unifor is prepared to offer its qualified support for a new special mediator mechanism that does not extend the collective bargaining timeline without consent of both parties, and that features a public report of the special mediator's recommendations.
16. Unifor is concerned that any additional mechanisms to facilitate the resolution of disputes should be considered only in light of the fundamental precept that labour disputes are an integral part of the collective bargaining model under the Code. Labour disputes will occur and must be permitted to occur, even where they cause inconvenience or economic detriment to others. As noted above, the maintenance of activities scheme in section 87.4 addresses situations involving immediate and serious risks to public health or safety.
17. As conceived by the West Coast Ports Industrial Inquiry Commission, either party would have the ability to request the appointment of a special mediator after conciliation. The Minister would also be able to appoint a special mediator after conciliation if the dispute had the potential to adversely affect the national interest.
18. Unifor's first and primary concern is that any new process should not delay or prolong the collective bargaining timetable, other than where the union and the employer each consent to an extension of time, in accordance with the current practice under section 75 of the Code. The work of a special mediator, including report-writing, ought to be restricted to existing timelines. In no circumstances should it extend beyond the current 21-day cooling off period. This would maintain a predictable timeframe for

- bargaining, avoid interference with the balance of bargaining power between the parties, and prevent infringement on the Charter-protected right to strike. In response to any concern that the current conciliation and cooling off periods are inadequate to permit effective work by a special mediator, we note that a special mediator would not replace the option of an industrial inquiry commission under section 108 of the Code. A special mediator process should be focused on a resolution of the immediate collective bargaining dispute, rather than attempting to diagnose and remedy broader or structural issues within an industry or workplace. Accordingly, their work should be capable of being completed within a shorter time frame.
19. If the duties of a special mediator were to entail an automatic extension of the bargaining timetable, our experience suggests that the right of a party to unilaterally request a special mediator would likely be abused and used by employers as a tool to delay a strike. Any extension of the bargaining timetable should therefore be premised on mutual agreement. Unifor may find a more permissive approach tolerable in cases where the Minister has identified a genuine critical national interest, provided that the definition of national interest is narrowly construed, and only if the delay is no more than strictly necessary to complete the special mediation.
 20. The preferred time for the work of a special mediator to occur is during, or overlapping with, the conciliation period and the cooling-off period. Most parties resolve their disputes with little or no third-party intervention, and it is desirable that intervention be graduated. Only after direct bargaining and conciliation have proven unsuccessful should the higher level of intervention represented by a special mediator be introduced into the process. An exception would be where a party is able to identify that conciliation has been or is likely to be unsuccessful and can therefore trigger the appointment of a special mediator early in the 60-day conciliation period. The Minister might be granted a similar power to intervene in bargaining relationships that are historically challenging.
 21. Where no settlement is achieved, a special mediator's report with recommendations about how the dispute might be resolved should be made public when it is delivered to the Minister. Issuing public recommendations should be a key aspect of the special mediator's role.

5. Reviewing section 107 of the Code

22. Part 5 of the Consultation Document concerns section 107 of the Code.
23. In our view, the recent use of section 107 of the Code is abusive, unconstitutional, and relies on a dubious interpretation of the statutory provision. Section 107 clearly does not give the Minister the power to end a lawful strike and impose binding arbitration. Such a misuse of the section has not and will not assist in achieving the Code's stated goal of promoting conditions favourable to the settlement of industrial disputes.
24. It must be recognized that a strike or lockout is the "usual and last-resort method" for resolving an impasse in collective bargaining.³ If the objective of the present consultation is to consider whether the Code might be improved by the addition of new mechanisms to encourage or facilitate the resolution of major disputes or ones that affect the national interest, the starting point should be the recognition that the expression of a general Ministerial power in section 107 does not include a power to end a dispute and impose interest arbitration or some other method of dispute resolution.

The text of the legislation does not expressly provide for such a power.

25. Section 107 of the Code confers upon the Minister the role of a facilitator but does not grant the Minister the power to suppress collective rights. Nowhere in the text of section 107 is the Minister expressly authorized to terminate a lawful strike or impose binding arbitration. Where that power is intended in the Code, it is clearly expressed, as in section 90 which permits the Minister to terminate a strike or lockout in certain circumstances during a national election.
26. The clear language of section 107, and its location under the heading "Promotion of Industrial Peace", suggests that the provision is actually intended to grant the Minister a general power to assist employers and employees in achieving the objectives of the Code, including the promotion of collective bargaining.
27. The CIRB's analysis of the legislative history of section 107 in *Canadian National Railway Company (Re)*, 2024 CIRB 1162 is instructive. With

³ *CJMS Radio Montréal Limitée* (1978), [27 di 796](#), p. 834.

reference to the work of the Woods and Sims task forces, it confirms that section 107 has never been regarded as a mechanism to permit the Minister to directly intervene to end a dispute in order to protect the public interest.

41. When reviewing the statements made by the two task forces, it is apparent that one option that was contemplated was the delegation of authority to the Minister or to the executive branch of government to intervene in public interest disputes. After carefully considering the policy implications, both task forces rejected the idea and recommended creating an external and stand-alone body to advise the Minister on appropriate intervention mechanisms, including when to resort to the enactment of legislation to end a dispute.⁴

The use of section 107 in 2024 and 2025 is unprecedented and contrary to historic practice and undermines the role of Parliament.

28. In the past, Ministers used section 107 of the Code exclusively to refer minor matters to the Board. Prior to 2024, no Minister issued directives to the CIRB to force an end to a labour dispute, impose binding arbitration or extend a collective agreement.⁵
29. The untenable use of section 107 by the Minister to issue such directives enabled the government to avoid enacting *ad hoc* back-to-work legislation. Unlike the government's recent use of section 107, enacting back-to-work legislation requires a democratic process, including parliamentary debate and, in certain cases, mobilizing the support of other parties in the House of Commons. Allowing the government to achieve the same result through a simple Ministerial directive circumvents Parliamentary scrutiny.
30. Bypassing democratic checks on Ministerial power means that Parliamentary review for compliance with the *Charter of Rights and Freedoms* ("Charter") is avoided. The Charter protects collective bargaining and the right to strike. Courts have defined how and when back-to-work legislation may satisfy Charter requirements.⁶ Although the courts may ultimately rule on the

⁴ *Canadian National Railway Company (Re)*, [2024 CIRB 1162](#) (CanLII) ("CNR"), para. 41.

⁵ *CNR*, *supra* at footnote 4, para. 52.

⁶ *SFL v Saskatchewan* [2015 SCC 4](#), at paras 83-84.

constitutional validity of a ministerial directive under section 107, the government should not be able to avoid these important safeguards.

Adverse effect on good-faith bargaining

31. If Ministers continue to invoke section 107 of the Code to end labour disputes, force a return to work, and impose binding arbitration, there will be little and more likely no incentive for employers to engage in collective bargaining.
32. As described above, the recent use of section 107 in 2024 and 2025 is likely to erode confidence in the collective bargaining system, because it will remove incentives to reach bargained settlements in difficult disputes.
33. This is clearly not the intended purpose of section 107. The section should only be used where the Minister finds it necessary to ask the CIRB to inquire into an ancillary issue that no party has yet brought to the CIRB, such as determining whether one of the parties has contravened paragraph 50(a) of the Code, whether a collective agreement has expired, whether the parties have ratified a collective agreement, or to which bargaining units a collective agreement applies. In addition, it empowers the Minister to take productive steps to create conditions that promote the settlement of disputes.
34. Unifor believes that any mechanism that would interfere with the right to strike should be referred to the Tripartite Advisory Council for Labour Policy for more careful review.

6. Bargaining approaches in other jurisdictions

35. Part 6 of the Consultation Document suggests that bargaining approaches from other jurisdictions might inform a review of the Code. The document identifies issues about broader-based or sectoral bargaining, geographically broader certifications, and collective bargaining models from other Canadian and international jurisdictions.
36. Unifor has, in other contexts, promoted novel ways to extend the benefits of unionization to workers who have no access to union membership because they are not employed in a certified workplace. Our constitution allows for the formation of “community chapters” to accommodate those who wish to have benefits of unionization but are not employed in an organized

workplace, or who are employed in precarious or contract employment. We have also advocated for sectoral bargaining in appropriate contexts⁷. Unifor therefore recognizes that new approaches to unionization are necessary in a changing economy.

37. However, this current Consultation is inadequate to deal with this very broad set of questions.

7. Introducing expedited grievance arbitration provisions

38. Part 6 of the Consultation Document identifies issues with the grievance arbitration process and raises the possibility of introducing an expedited arbitration process into the Code.
39. The absence of a statutory expedited arbitration process distinguishes the Code from labour statutes in other jurisdictions. Ontario, British Columbia and several other provinces provide for expedited arbitration in their labour legislation, and Quebec has recently amended its *Labour Code* to modernize the arbitration process and address significant grievance backlogs.
40. Delay and backlogs in grievance arbitration are common and well-known. They undermine the effectiveness of the arbitration system which was established precisely to ensure accessible and speedy justice for unionized employees. A backlog of pending grievances inevitably becomes an issue during bargaining. Unifor's experience is that deliberate delay can be weaponized by employers, to create issues that can be made the subject of demands at the bargaining table.
41. Unifor proposes that the Code should include a statutory expedited arbitration process. However, a mandatory legislative model may not suit all workplaces. Some Unifor bargaining units already have expedited arbitration provisions in their collective agreements, and negotiated processes may be more effective where they are tailored to the realities of a particular workplace. Unifor therefore proposes that a statutory process be available, except where the parties have bargained an equivalent or superior expedited arbitration process in their collective agreement. Permitting parties to

⁷ See for example Unifor's submission to ESDC consultation, *Developing Labour Protections for Gig Workers*, (May 14, 2021).

bargain their own expedited arbitration process will allow employers and unions to adapt the process to their specific needs.

42. We therefore suggest that the legislation encourages parties to negotiate an expedited arbitration process in their collective agreements. Parties would be able to structure the process themselves, including by defining the kinds of cases that can be referred to the expedited arbitration process, the timelines within which cases can be addressed, and the duration of the arbitration process depending on the type of case.
43. However, it is doubtful that an expedited arbitration process would entirely eliminate existing problems of grievance delay and backlog in workplaces. While it may be beneficial that an alternative path to expedited arbitration be made available, such a process is unlikely to have the capacity to accommodate large volumes of grievances.
44. Unifor believes that the government should also establish a comprehensive consultative process to serve as the basis for a genuine reform of the grievance arbitration system under the Code. A more in-depth consultation might usefully examine these issues:
 - a. the introduction of a mechanism for mandatory pre-hearing disclosure of evidence in grievance arbitration. This would facilitate settlement discussions and make it possible to better assess each party's prospects of success based on all the relevant information.
 - b. the use of alternative dispute resolution methods to resolve grievances prior to arbitration.
 - c. the implementation of measures to reduce the number of hearing days and promote proportionality within the arbitration process. It is not enough simply to shorten the period between the filing of a grievance and the first day of the hearing. There must be measures aimed at concluding the entire arbitration process more quickly.

8. Strengthening training supports for workers affected by artificial intelligence and automation

45. Unifor supports enhanced assistance, including training programs, to assist workers who are affected by the introduction of automation, including artificial intelligence. The types of assistance provided to affected workers

- should reflect the specific industry and workforce and be developed in consultation with unions. Where appropriate, unions could be engaged to deliver programs and training opportunities to affected members. Any supports should not replace an employer's obligations under a collective agreement or the Code to inform, consult or engage a Union with respect to technological change or to provide compensation.
46. The current consultation considers automation and artificial intelligence narrowly in the context of training and skills development. However, the impact of automation and artificial intelligence on workplaces will be wide-ranging and significant.
 47. The Code currently establishes minimum requirements concerning technological changes introduced by an employer. Unions and employers may also negotiate technological change provisions that exceed the Code minimums. Any amendments to the Code to address automation and the impact of artificial intelligence should incorporate the following principles:
 - a. Workers and their unions should have ongoing access to information regarding automation in the workplace, including how an employer is using automation tools to manage workers. Workers and their unions should be consulted on the effects of this automation.
 - b. The introduction of automation systems, surveillance and artificial intelligence tools should be limited to the stated purpose. Expanding the scope of a tool should require disclosure and workers and their unions should be consulted on the effects of this change.
 - c. Workers should have information rights over the collection, use and disclosure of their personal information and data. These rights should extend to workers as individuals and as members of unions, in cases that involve the use of their information and data.
 - d. The use of automation tools and algorithmic management by employers to substitute decision-making about discipline and termination should be prohibited.
 - e. Impact assessments on the implementation of automation using digital and large data sets means reasonable access to data and the use of that data by those affected by the use.

9. Misclassification and wage theft

48. Part 9 of the Consultation Document invites comments about the misclassification of employees as independent contractors, with a focus on those working in the road transportation sector.
49. Unifor supports the approach taken in British Columbia to address misclassification in the freight transportation industry, and specifically, the authority vested in the Office of the British Columbia Container Trucking Commissioner (“Commissioner”) to set minimum wages rates and trip rates applicable to directly employed operators, indirectly employed operators, and independent operators, respectively.
50. Following regular consultations with industry stakeholders, the Commissioner sets annual minimum wage rates and trip rates. This creates stability and predictability for all industry stakeholders and ensures drivers are paid fair, equitable rates.
51. Crucially, it also acts to eliminate some of the financial incentives that currently exist to misclassify drivers as independent operators. The Commissioner is empowered to set minimum trip rates applicable to independent operators that are relatively high compared to the minimum wage rates applicable to the services of indirectly or directly employed operators. These relatively high trip rates are intended to reflect and compensate for the much higher operating costs faced by genuinely independent contractors. Imposing these higher trip rates removes some of the financial incentive to misclassify an employee driver as an independent contractor, as any “benefit” (i.e., avoidance of tax obligations, overtime payments, holiday pay, etc.) is mitigated by the requirement to pay a higher rate.
52. Unifor would support the introduction of a similar program in the federal sector, in which an independent commissioner is created to set minimum rates applicable to the industry. Such a commissioner could be tasked with other mandates, similar to those of the BC Container Trucking Commissioner, such as regulating licenses, investigation and enforcing compliance, and overseeing an anonymous complaint/reporting phonenumber.

53. Unifor also recommends more stringent regulation of digital platforms which rely on AI and algorithmic management systems to direct and coordinate drivers and operators in the road transportation sectors. While taking on a significant role in directing the work of drivers, setting rates of pay, and connecting drivers with clients, these platforms will often deny that they are “employers”, thereby avoiding the associated obligations and costs. This has the potential to create uncertainty about who is the true employer and may make it more difficult for a worker to enforce their labour and employment rights. Regulation of these digital platforms may assist in ensuring that workers in the road transportation sector are not improperly labeled as independent contractors, when they are in fact employees.

10. Workplace health and safety protections, and labour mobility

54. The Consultation Document suggests that federal, provincial and territorial governments are making efforts to “remove barriers” to labour mobility that are created by occupational health and safety (“OHS”) requirements in order to enhance labour mobility across Canada. It refers to an initiative to harmonize OHS topics and develop an inter-jurisdictional training framework across jurisdictions in Canada.
55. Any federal government-led promotion of a harmonized OHS system must start with the principle that harmonization should mean achieving the most protective laws and regulations related to hazard reduction and elimination, worker participation and regulatory enforcement. A removal or reduction of labour mobility barriers should not mean a removal or reduction of any OHS standards.
56. While Unifor is skeptical of a harmonized approach, any effort to harmonize OHS rules must include unions as participants at decision-making tables in that process.
57. There are numerous health and safety topics that would benefit from national harmonization, and many are already readily available in a pan-Canadian format through the Canadian Standards Association (“CSA”) standards. Additionally, there are numerous other CSA standards, for example related to respiratory, eye, hearing, head and face, and whole-body protections, that should be reviewed for purposes of harmonization.

58. Each of the topics raised in the consultation document (fatigue or substance related impairment, use of artificial intelligence, psychological health and safety, and climate related risks) requires extensive input from stakeholders and subject-matter experts. This present consultation is not adequate for this complex undertaking. Modernizing Part II of the Code to address the evolving nature of workplaces requires extended involvement from stakeholders, with a focus on identifying and prioritizing hazard reduction and elimination. In order to address the changing nature of occupational health and safety in federal workplaces, the federal government must first establish an appropriate body to study, consult and recommend changes. That process must be scientifically-informed and include an in-depth public consultation process to receive feedback from stakeholders and subject-matter experts. For example, Unifor urges the government to develop a process to study and assess health and safety concerns in unique high-risk workplaces, such as the armoured car industry, and to identify particular hazards affecting pregnant and breastfeeding employees.
59. In addition to establishing an appropriate body to study the modernizing Part II of the Code, among the tools that can be improved to strengthen outcomes in federal sector workplaces is increasing the support that workers directly receive from ESDC regulators. To do this, the federal government should significantly increase the number of workplace safety inspectors, and the Code should be amended to recalibrate the IRS system that removes a workers' ability to receive "hands on" assistance from EDSCC safety inspectors. Increased worker access to ESDC officials should also be complemented by increased spot inspections of workplaces, and prosecutions of employers—using tools like the *Westray Act*—would strengthen outcomes and promote the proactive reduction and elimination of hazards in federal workplaces.

11. Extending successor rights in cases of contract retendering

60. Part 11 of the Consultation Document invites comments about the problems created by the loss of collective agreements and bargaining rights when contracts are re-tendered. Contract flipping leaves unionized and non-unionized employees vulnerable to competition, low wages, loss of accrued benefits, and high turn-over.

61. Federally regulated industries in which Unifor's members work experience frequent contract flipping. Unifor's 2017 submission to the Standing Committee on Transport, Infrastructure and Communities highlighted how the practice of contract flipping had intensified over time and led to lower wages and less stability for airport workers, and lower safety standards and higher likelihood of accidents at airports across the country.⁸
62. The Consultation Document refers to some of the beneficial measures that have resulted from legislative action in recent years, including the addition of continuity of employment for purposes of the labour standards entitlements in Part III, and expanded remuneration protection for all airport workers in section 47.3. The expansion of the section 47.3 protections has benefitted airport workers, and it was a welcome reform but workers in other sectors deserve the same protection, and there is no good reason for confining section 47.3 to airport workers. Unifor therefore supports an amendment to section 47.3 that would broaden its application.
63. An unfinished reform is an amendment to the Code that would ensure that workers' bargaining rights and collective agreements continue after a contract retendering. The Consultation Document correctly identifies that when a business is transferred by way of a contract retendering, a union's bargaining rights and collective agreement with the predecessor contractor do not usually carry over to the successor contractor's workforce. This is despite the fact that in many cases, the same employees are doing the same work, in the same place, using the same tools and methods. All that has changed is the identity of the contractor.
64. Workers who have chosen to be represented by a union and who are protected by a collective agreement should not lose those protections because of corporate transactions. In Ontario, the Changing Workplace Review advisors in their Final Report at page 410 made the following comments about the problems associated with contract retendering and the lack of successor rights:

We do conclude, however, that in industries mostly populated by vulnerable and largely unskilled workers, the constant re-

⁸ Unifor, *Unifor Submission to TRAN Study of Aviation Safety*, April 2017.

tendering of contracts is, in many cases, not a mechanism aimed at achieving efficiencies through acquiring greater expertise or different methods of production but, rather, a mechanism to reduce costs by substituting a cheaper, non-union contractor for a unionized one. The social cost and impact of this “efficiency” is borne by those least able to bear it, namely, the vulnerable and the precarious employees in that industry. If a union in collective bargaining negotiates improvements in the working conditions for the unskilled and vulnerable people it represents, these gains are negated by re-tendering. The effect of constant re-tendering is not only to keep compensation low but also to eliminate improvements achieved through collective bargaining.⁹

65. Jurisdictions such as British Columbia and Ontario have implemented contract flipping protections to address these issues. In British Columbia, section 35 of the *Labour Relations Code* provides for successor rights related to building cleaning services, security services, bus transportation services, food services, and certain non-clinical services provided in the health sector. In Ontario, section 69.1 of the *Labour Relations Act* establishes successor rights in respect to building services, including cleaning, food and security services.
66. Unifor therefore recommends that Part I of the Code be amended to deem a sale of business to have occurred for purposes of section 44 where an employer that provides services to a client ceases to provide those services, and another employer begins to provide the same or substantially similar services to the client.
67. While contract re-tendering in the federal jurisdiction may be most common at airports, there is no principled reason not to provide all workers with the protection of successor rights, regardless of the sector in which they are employed. Therefore, an amendment should have general application to workers in all sectors.

⁹Mitchell, C. Michael and Murray John C., *The Changing Workplaces Review: An Agenda for Workplace Rights* (2017), (https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf) (Ontario), p. 410.

12. Sustaining the Wage Earner Protection Program

68. Part 12 of the Consultation Document is about the Wage Earner Protection Program (“WEPP”), established under the Wage Earner Protection Program Act (“WEPPA”). WEPP is designed to provide timely and guaranteed payments to former employees who are owed eligible unpaid wages and meet the eligibility requirements determined by the statute. The intent of WEPPA is to better balance the risks of insolvency between employees and other creditor groups. It has proven to be a valuable lifeline for workers who face the loss of employment resulting from a bankruptcy or insolvency.
69. WEPPA entitlements may be triggered when an employer is subject to proceedings under the *Companies’ Creditors Arrangement Act* and a court determines that the employer has terminated all its employees in Canada, other than any retained to wind down its business. The Consultation Document questions the use of certain court-supervised remedies in insolvency proceedings such as reverse vesting orders (“RVOs”). In recent years, there has been a significant increase in the use of RVO transactions in insolvencies.
70. At present, WEPPA and its regulations do not account for the particularities of an RVO transaction structure and the impact on the treatment of former employees of a debtor company. In the event that the federal government decides to make changes to WEPPA, or the CCAA, to account for RVO transactions, it is imperative that the federal government acknowledge that employees have no control over the structure of any CCAA transaction, and employees should not be prejudiced by the commercial choices or conveniences used by companies, trustees, receivers or CCAA monitors. Any changes to WEPPA designed to address the true employer in RVO transactions should be to ensure that employees continue to have access to WEPP benefits when they need them.
71. WEPP was created as a program to benefit workers facing the loss of their employment due to circumstances far outside their control. Unifor strongly opposes any proposed changes to WEPPA or the CCAA that might serve to delay entitlements to payouts under the program. If the federal government is concerned that eligible unpaid wages are paid out of WEPP improperly, it

should be up to the federal government to seek indemnification from the “true” employer.

72. Further, Unifor supports amendments to WEPPA and its regulations that would increase and improve access to WEPP benefits for workers.
73. First, Unifor submits that the federal government should increase the maximum amount for eligible wages that may be owing to individuals under section 7 of WEPPA. Presently, the maximum amount an employee may be entitled to under the legislation is an amount equal to seven times the maximum weekly insurance earnings under the *Employment Insurance Act*. For many workers, and in particular those with significant years of service, the maximum amount to which they may be eligible under WEPPA falls significantly short of what they would be owed if their employment were terminated in the ordinary course of their employment. For instance, in many bankruptcy and insolvency scenarios, employees that become eligible for WEPPA are required to forgo their termination or severance pay entitlements entirely. For many workers, this may represent significant sums of money. The current maximum under section 7 of WEPPA is far from an adequate substitute for addressing many workers unpaid wages claims.
74. Second, the federal government should make WEPPA's processes more accessible by increasing the notice that trustees and receivers must provide to individuals eligible to receive amounts under the legislation from 45 to 60 days (WEPPA regulations, section 16) and extending the application for payment period from 56 to 75 days (WEPPA regulations, section 9).
75. Finally, Unifor proposes that where a bankruptcy or insolvency proceeding has resulted in a group of 50 or more employees having had their employment terminated, and those employees are eligible to receive payments under WEPPA, the federal government should require the trustee or receiver to automatically apply to WEPP on the employees' behalf.

13. Other potential changes to the Code - Settlement of first collective agreements

76. The Code promises to support collective bargaining and good industrial relations because it is in the best interests of Canada to ensure “a just share

- of the fruits of progress to all”¹⁰. Despite that promise, the existing mechanism in the Code for the resolution of first collective agreement disputes after a union’s certification is inadequate and increases the risk that the promise of collective bargaining in the Code will be illusory.
77. Access to a meaningful process for the resolution of first collective agreement disputes is the only way to assure workers’ access to collective bargaining. Absent such a process, it is too easy for employers to drag out the bargaining process and erode employee support for the union.
 78. The existing rudimentary assistance in the Code is in section 80. Access to a process of Board-imposed terms for the settlement of some or all issues is available only where the conciliation process has been exhausted and the parties are in a lawful strike or lockout position. The Minister may, if the Minister decides it is necessary or advisable, direct the CIRB to inquire into the dispute and, if advisable, to settle the dispute by imposing terms. The Board’s considerations in deciding whether to do anything at all must include the extent to which the parties have or have not bargained in good faith. Section 80 is used by the Board only in exceptional cases.
 79. In contrast, other jurisdictions do not require that one party be found to be at fault in order to trigger access to a process of first contract arbitration. In British Columbia, a mediation-intensive model provides that a mediator makes recommendations that can form the basis for a voluntary first collective agreement, or an arbitrator-imposed collective agreement. In Manitoba, an automatic access model allows a party to access an arbitration process while still encouraging parties to make their own agreement. In both models, an agreement is imposed only after the parties have had opportunities to benefit from the assistance of a mediator.
 80. These alternative models promote the principles of free collective bargaining, while ensuring that a union’s certification is followed by a first collective agreement in every case. Unifor encourages consideration of these models.

¹⁰ Code, Preamble.