

The Standing Senate Committee on Transport and Communications

December 7, 2025



Contact

Lana Payne

National President

lane.payne@unifor.org

Introduction

Unifor is Canada's largest union in the private sector, representing 320,000 workers in every major area of the economy. The union advocates for all working people and their rights, fights for equality and social justice in Canada and abroad and strives to create progressive change for a better Canada.

Unifor is also Canada's largest union in the federally regulated private sector, representing more than 66,000 workers in the federally regulated private sector (FRPS) including transportation, media, telecommunications, and financial services. Many of our members are employed by railway and marine businesses.

Unifor welcomes the opportunity to provide this submission to the [Standing Senate Committee on Transport and Communications](#) to contribute to its study about [study on maintenance of activities or essential services in the federally regulated rail and marine sectors in the case of labour disruptions](#).

Collective bargaining in the federally regulated private sector works

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 bargained collective agreement.

In the FRPS, Unifor conducts its bargaining within the essential services framework established in section 87.4 of the *Canada Labour Code*. Section 87.4 is directed specifically towards the prevention of immediate and serious danger to the safety or health of the public. Whether a work stoppage might result in economic hardship or harm to the national economy does not fall within the scope of section 87.4.

The scope of essential services in section 87.4 of the Code is deliberately narrow, but it permits real essential services to be identified. The provision allows workplace parties to agree that services are or are not essential. If there is no agreement, the Canada Industrial Relations Board may identify the essential services that must be maintained.

The narrow definition of essential services recognizes that any restriction on the right to strike is detrimental to the ability of unions to bargain effectively, and amounts to an infringement on *Charter* protected rights (*Saskatchewan Federation of Labour v. Saskatchewan*, [2015 SCC 4](#)). For Unifor and other trade unions, these *Charter* protected rights must be prioritized.

Unifor's position is that the existing essential services scheme adequately protects the public from serious harm resulting from labour disputes.

Concerns about economic harm are overblown

Current conversations about broadening restrictions on the right to strike, under the guise of protecting the transportation of certain goods on federally regulated transportation networks, ignore the *Charter* protected rights of FRPS workers.

Unifor shares the view that Canada's federally regulated transportation networks are a key driver of economic prosperity and trade. There continues to be a need to assess Canada's infrastructure needs, and invest in a modern, connected and resilient transportation system. Unifor advocates for measures that make our transportation infrastructure more resilient, and we advocate for strategic investments that improve transportation networks to contribute to Canada meeting its climate change targets. However, the actual threats to that system are not from infrequent labour disputes.

Workers are the productive engine of Canada's transportation networks. Decades of industry deregulation have resulted in poorer job outcomes and weakened work standards. Deregulation and other anti-labour activities, such as chronic contract flipping and contracting out, have contributed to recruitment and retention issues plaguing critical parts of the sector today. Limiting worker power by curtailing the rights of workers to strike would contribute to the continued erosion of job quality, further destabilizing transportation networks. A stable, secure, and skilled workforce must stand atop the list of priorities for establishing and maintaining reliable transportation networks. Job quality must be part of the conversation.

Section 107 is being abused

The Minister of Labour's recent use of section 107 of the Code to refer labour disputes in FRPS to the Canada Industrial Relations Board and to order the Board to direct an end to the work stoppage, is wholly inappropriate. It is at odds with the history of labour relations in our country. The use of section 107 in this manner, to bypass the terms of section 87.4 and other parts of the Code is inconsistent with a reasonable contextual interpretation of section 107 and runs afoul of the *Charter*

The novel and egregious use of section 107 is a departure from past practices that is as surprising as it is radical. Employers and unions in the FRPS have never understood that section 107 may be used in this manner. A good illustration of this is to recall that no such power was contemplated when the Code underwent a significant review in the late 1990s. The collective bargaining provisions of the *Code* were amended following careful study by a task force that consulted widely with labour and management. The "Sims Task Force" reported its findings to the Minister of Labour in 1996¹. The subsequent amendments included the enactment of section 87.4. The Task Force identified no need for a broader power to intervene to address inconvenience or purely economic harm. Nothing in the Sims Task Force study suggested that the then-existing section 107 carried with it such a

¹ Sims, Andrew C.L., *Seeking a Balance, Canada Labour Code Part 1 Review* (Ottawa, 1995).

broad power. No circumstances have arisen in the last 30 years that would cause a different conclusion to be reached today.

The novel use of section 107 casts doubt on the correctness of that application.

First, section 87.4 of the Code adequately addresses the circumstances under which services can be identified as being so essential that they must be maintained during a strike or lockout. In most if not all recent uses of section 107, the Minister's action was taken despite agreements on the part of the affected unions and employers that no essential services were actually in issue. The recent uses of section 107 to expand the scope of what is "essential" ignores the specific intention of Parliament to provide a limited tool for the identification of circumstances in which the public interest in avoiding immediate and serious dangers to the safety and health of the public justifies an infringement on the right to strike.

Second, the putative breadth of the discretionary power in section 107 cannot reasonably be defended when it is interpreted in the context of the Code as a whole and in the context of our established labour relations scheme. The Government has only recently asserted that section 107 confers a power broad enough to encompass the ability of the Minister to direct the Board to terminate strikes and order interest arbitration to resolve disputes. That interpretation is unreasonable because it ignores the many mechanisms in the Code that specifically address ways in which strikes and lockouts are controlled, or can be terminated or suspended. These include the specific statutory provisions governing essential services (section 87.4) including those concerning services to grain vessels (section 87.7), first contract arbitration (section 80), unlawful strikes (section 91) and a narrow power in section 90 to invoke the public interest to suspend the right to strike during a federal election. In addition, detailed procedural requirements in section 89 describe how labour disputes may occur only after detailed procedural rules are satisfied. That also suggests that a general power to control strikes and lockouts is not intended in section 107. An obvious challenge to the recent interpretation of section 107 is to say that all of these provisions of the Code would be unnecessary if section 107 were broad enough to permit what has recently been asserted. The presence of these other provisions suggests that no general power exists in section 107 to end work stoppages.

Third, the recent interpretation of section 107, if it were correct, would mean that the many occasions when Parliament has enacted back-to-work legislation over past decades were unnecessary. Simply put, if section 107 means what the Government now says it means, all of those Parliamentary enactments would have been unnecessary. Those prior enactments suggest that no general power to terminate strikes exists in section 107.

Section 107 is used to avoid back to work legislation

Of course, *ad hoc* statutory enactments to suspend or terminate strikes or lockouts are politically difficult. The conclusion must be that the recent use of section 107 has been to avoid Parliamentary scrutiny and short and long-term political cost that would accompany the introduction and passage of back-to-work legislation.

Furthermore, back-to-work legislation is subject to *Charter* scrutiny, and its *Charter* compliance may be assessed by courts. While the new use of section 107 may also be subject to eventual *Charter* scrutiny, the political cost is certainly avoided.

Conclusion

The labour relations scheme in the FRPS results in settlements without labour disputes in almost all cases. The integrity of that stable system of labour relations is compromised by Government action that relies on imaginative but very flawed interpretations and applications of existing law.

In the Canadian federal system, where 90 per cent or more of Canadian workers are employed in the provincial jurisdiction, and where most collective bargaining occurs, there is also a real risk that the Labour Minister's abuse of section 107 will prompt provincial legislatures to enact similar provisions. For example, Quebec has recently enacted a similar broad ministerial power to terminate labour disputes ([Bill 89, An Act to give greater consideration to the needs of the population in the event of a strike or a lock-out](#)).

The recent use of section 107 to terminate labour disputes incentivizes employers to avoid bargaining fairly. It may also undermine the confidence that workers will have in the integrity of the labour relations system. Government intervention inevitably causes workers to believe that their employers have the Government on their side, tipping the balance against the interests of workers and their Charter-protected rights. This erodes trust in the integrity of the bargaining process.

Unifor therefore:

- Opposes the recent use of section 107 by the Minister of Labour.
- Objects that new limitations on the right to strike based on concerns about economic harm are unnecessary.
- Expresses concern about the erosion of a stable labour relations scheme.

/cccope343