

Strengthening Transportation Security Clearances for One Canadian Economy

Submission to Federal Government Consultation

Unifor

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Summary

- Workers should be thought of as the frontline of securing our supply chains, not the problem.
- Addressing security in Canada's supply chain requires a more wholistic view of security than simply attempting to remove the human element from the system through denying workers based on a standardized rubric controlled by their employers.
- Workers should be treated with procedural fairness and assumptions of innocence until convicted, while the process should also include concepts of rehabilitation.

Unifor requests direct consultation on these changes to discuss details. Governments should understand the broader implications, manage the costs of implementation and ensure procedural fairness.

Introduction

Unifor represents tens of thousands of workers across the transportation and warehousing supply chain from ports, marine, aviation, rail, road and logistics. Our union represents a significant number of workers in all the sub-sectors of the transportation, supply chain, and logistics services outlined included in this review.

Many of our members engage with some level of security clearance to access restricted areas, but most are not covered by intrusive background checks as articulated in the government's discussion report. Others, such as those who work under the Canadian Air Transportation Security Authority (CATSA), already operate under a particularly extensive review process. How this new security clearance system interacts or extends that process is also unclear.

Any changes to that process will have direct impacts on labour relations, employment, and will affect the rights of members in those workplaces.

It is clear that governments around the world think that there are large gaps in our supply chain security and are under increasing pressure from the Americans to put more resources around securing trade processes. Unifor would welcome more resources being applied to secure Canada's supply chains through our investigative and security services.

However, Unifor is concerned, along with unions internationally, that there seems to be little evidence of widespread criminal issues involving workers that would be solved through or warrant announced changes to security clearances. The Maritime Union of Australia provided extensive critique of that government's assertion that there was widespread infiltration of organized crime during an extensive review process in that country.

Review

Unifor believes changes to the security clearance regimes as outlined by the discussion paper seeks to download responsibility to regulate security of our infrastructure to unions, our members, and employers, none of whom are equipped to do any level of sophisticated investigative due process.

Expanded background checks, especially if automated and contain "secret" information, for workers who may have been employed in the sector for decades creates job security risks and uncertainty for workers. The extremely broad net of guilt by association, "suspicious activity" or so-called "vulnerability to exploitation" creates additional layers of concern around due process and procedural fairness.

There is little detail on the type of information, review process, or limits. However, where similar systems have been implemented elsewhere it has caused significant issues for workers and employers alike.

Both in Australia and the EU, effects on the labour market and employment in those sectors are still being measured. Unions have been public in their opposition to the changes and have tabled significant updates to their collective agreements to try to ensure the costs of dealing with the obtrusiveness and time related to security checks are not borne by the workers. Australian unions have gone so far as to establish a specialized legal support service for members caught in unfair targeting by employers and secret or outdated information resulting in loss of employment. The goal has been full cost recovery from the employer and government on any delays of shift in employment resulting from security checks.

Current timelines for even standard security and background checks in Canada can vary widely from days to months and the feedback we have received from locals is that the process is a black box. Our Locals who have dealt with the introduction of a security clearance process have had to respond to address timeline uncertainty and implications with Collective Agreement language that expands-out who can apply for security clearance to all those in the unit to disincentivize gaming by the employer on shifts and who can advance in the workplace.

Workers should have the option of shifting to non-security clearance necessary/non-sensitive work while clearances are under review or pending without loss of income.

However, many of our employers in these sectors are contractors or subcontractors with access to areas and not all workers have union coverage as workers lose collective agreements when contracts are flipped. Contract employers who regularly infringe collective agreements and labour law will abuse any additional process provided to them. Labour relations are already strained across aviation subsectors.

Protections for workers and fairness are far from guaranteed.

Rigid background checks disproportionately impact workers from equity-seeking communities and long-term workers. The demographics of the workforce in the transport, logistics, and supply chain in Canada is such that association, immigration issues, vulnerability to exploitation are going to be extremely important to define. Workers from vulnerable communities and economic upbringings or backgrounds who required rehabilitation will leave individuals open to unfair guilt by association or having to re-explain mistakes or something in police record that had been dealt with long in their past.

A lack defined concept of rehabilitation has led similar processes in other countries resulting in members reliving painful but irrelevant past situations. The additional untethered and arbitrary nature of what is or is not considered an issue creates uncertainty over employment. A waivers and an appeals framework is necessary to provide some employment stability for these workers.

Finally, automated background checks rely on database information being correct and up-to-date. However, these databases often contain errors or are not updated properly. If evidence is secret or cannot be reviewed and corrected, workers will not have meaningful avenues for procedural fairness and therefore fair access to employment.

The knock-on effects on the labour market, negatives for fairness for workers, and ease of implementing such a system should not be underestimated.

Unifor requests direct consultation on these changes to discuss details. Governments should understand the broader implications, manage the costs of implementation and ensure procedural fairness.

Unifor must prepare for any changes to the security clearance process and ensure collective agreement language protects members from novel harms and emergent processes.

Issues that Unifor would like to see addressed include:

1. How will there be an assurance of procedural fairness?
2. How are employers abusing the security clearance process to bypass just-cause terminations and grievance process in collective agreements?
3. Reasonable, time-limited "lookback" periods for certain non-violent issues in security checks.
4. Incorporating the concept of rehabilitation.
5. Clear avoidance of broad and unfair "guilt by association".
6. The use of secret evidence.
7. Employer coverage (pay) during screening or appeals, as is the practice in current workplaces with security clearance.

8. Employer paid legal/arbitration fees.
9. Protections against employer abuse of the security system (AtkinsRealis)
10. Ensure broader mandate has limits for expansion into private, off-duty surveillance data building extensive files on workers simply because of their sector of employment.
11. Protection of privacy and security of members' information when sharing information domestically and internationally.

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