Bill C-39

An Act respecting certain Measures to Strengthen the Economy

Unifor Submission

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UNIFOR

theUnion | lesyndicat

Contact
Lana Payne
National President
lana.payne@unifor.org

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Introduction - About Unifor

1. Unifor is Canada's largest private sector union, with more than 320,000 members across the country, working in every major sector of the Canadian economy. We bargain more than 2600 collective agreements in all jurisdictions. We have deep experience in collective bargaining across the federally regulated private sector. We understand how to reach agreements, and we take a great deal of pride in our record at the bargaining table and in the advances we have made for all workers.

2. Our union represents 70,000 members in the federally regulated private sector, including 46,000 members in transportation, concentrated in aviation (12,000), rail (11,000) and marine transportation (3,000). We also have members in road transportation (20,000), most of whom are also in the federal jurisdiction.

3. Unifor members are employed by some of the largest firms in Canadian transportation, including Air Canada, Marine Atlantic, CN Rail, CPKC Rail, VIA Rail, and the St. Lawrence Seaway, among many others. Unifor members keep Canada's supply chains moving safely and efficiently. They maintain these high standards through collective bargaining, empowered by the right to strike.

4. Unifor members are also employed in other federally regulated industries including telecommunications, broadcasting, aerospace, and nuclear energy.

General statements about Bill C-39

5. This submission is limited to those aspects of Part 3 of Bill C-39 that amend the industrial relations provisions of the Canada Labour Code.

6. Some aspects of Bill C-39 are very welcome. Other aspects are of serious concern to Unifor.

7. Before addressing aspects of the Bill that are of serious concern to Unifor, we address two Code amendments that we regard as very beneficial to Canadian workers.

Contract flipping

8. The welcome aspects of the Bill include the amendments to the sale of business provisions of the Canada Labour Code (see sections 310 to 313 of Bill C-39). A change from one contractor to another for the delivery of services at airports and other prescribed workplaces will be treated as a sale of business for the purposes of the Code. This will ensure continuity of union bargaining rights and of collective agreements by making them binding on the new contractor. This addresses the well-known problem of "contract flipping" in a way similar to the way that statutes in Ontario and British Columbia deal with certain services. Unifor has for many years called for similar measures in the federal sector to stop the loss of bargaining rights and collective agreements when contracts change hands. This measure is therefore very welcome and will be of considerable benefit to many Unifor members.

9. The Bill makes the new provisions apply at airports and in other industries and work locations only by regulation. While contract re-tendering in the federal jurisdiction may be most common at airports, there is no principled reason why all workers should not have the same protection, regardless of where they are employed. Therefore, Unifor would propose an amendment to the Bill to make the provision have general application to workers in all sectors and not just those at airports.

First collective agreement arbitration

10. The subject of first collective agreement arbitration is another very welcome measure. A new section 35.1 and section 80 (see sections 308 and 321 of the Bill) will help ensure that when workers support and win a union organizing campaign, they will get the benefit of a first collective agreement in every case.

11. The Code in the Preamble to Part I 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". Despite that promise, the existing mechanism in the Code for the resolution of first collective agreement disputes after a union's certification has been inadequate and has increased the risk that the promise of collective bargaining in the Code will be illusory. Access to a meaningful process for the resolution of first collective agreement disputes is essential. Absent such a process, it is too

easy for employers to drag out the bargaining process and erode employee support for the union.

12. It is important that Bill C-39 would enact a simple process that is available as of right, upon application by either the union or employer nine months after the notice to bargain. Rather than the proposed nine-month delay, Unifor would propose a shorter time frame such as six months of bargaining after which interest arbitration may be requested.

Other provisions

13. Unifor is largely supportive of most of the other amendments to the industrial relations provisions of the Code in Bill C-39. Those amendments appear designed to improve the likelihood of bargained outcomes in circumstances that might otherwise lead to a dispute. However, the proposed new section 107 is a blunt instrument that does not serve that goal and may lead to an opposite result.

Interference with the right to strike – section 107

14. Unifor shares with other unions a grave concern that the amendments to section 107 will negatively affect collective bargaining, risking more and not less conflict.

15. The proposed new section 107 (see section 334 of the Bill) would give an explicit new power to the Minister to effectively end any strike or lockout that the Minister deems is contrary to the "national interest", without any oversight or intervention by Parliament. This would formalize and legitimize direct interventions by the Minister to force an end to a strike or lockout. The Government must not assume that unions have accepted the legitimacy of such direct interventions by the Minister under the existing section 107. They have not. The legality of using the existing section 107 to interfere with the right to strike remains to be decided by the Courts in several pending cases. Even if the proposed new section 107 appears to make more explicit the right of the Minister to interfere, it will be subject to similar challenges. In particular, there will be challenges about whether a Ministerial intervention offends the freedom of association that is guaranteed by our *Charter of Rights and Freedoms*.

Section 107 issues that require more clarity

16. The new section 107(2) of the Code would confer on the Minister a power to end a strike or lockout when it "occurs". In the French text of the Bill, the words used are, "a été déclenché" which suggests a triggering of a strike. The CIRB may be directed to make an order that services and employee duties be resumed or continued, or to make an order extending the operation of a collective agreement. It appears from this choice of words that the Minister's power would be available only when a strike or lockout has actually commenced, and would not be available to bar a strike or lockout prior to its commencement. Despite that, the use in the same subsection of "continuation" of employer operations and employee duties may create doubt whether the power is in fact limited to ending an ongoing strike or lockout. Clearer language is needed if the intention is that this power will be available only to end strikes and lockouts after their commencement.

17. In section 107(2)(a), the exercise of the power to direct the CIRB to end a strike or lockout would require the Minister to have considered "the special mediator's report referred to in section 87.01(2)". It is unclear whether this means that an order under section 107(2) will only be available in cases where a special mediator has been appointed and has not resulted in an agreement. The September 22, 2026 Cabinet Directive[1] at section 3.2 suggests that this is intended. If that is the intention, clearer language is needed because the draft language can equally be interpreted to mean that a special mediator's report must only be considered if there is one.

The new "national interest" test

18. In section 107(2)(b), the exercise of the Minister's power depends on the Minister having the opinion that a strike or lockout adversely affects or may adversely affect the "national interest". Subsection 107(3) requires the Minister to account for three things in determining whether the national interest is at stake. These are whether the dispute has or may have a significant impact on the Canadian economy, whether it is causing "serious social disruption", and whether it impacts freedom of association.

[1] https://www.canada.ca/en/one-canadian-economy/news/2026/09/cabinet-directive.html

19. These criteria are vague and subjective and appear to conflict with Canada's international obligations and commitments.

20. The suggestion in the September 22, 2026 Cabinet Directive[2] at section 3.2.2 that a "national impact assessment" would be completed by ESDC does little to address this concern because, under the proposed new s. 107(2)(b), the action would ultimately rest on the Minister's opinion about national interest.

21. Despite the inclusion of the requirement that the Minister must consider the impact on freedom of association, there would still be much room for debate about whether the constitutionally protected freedom of association in the *Charter* is adequately respected in any particular Minister's direction under subsection 107(2).

International law

22. The proposed new section 107 appears to be a direct violation of Canada's international legal obligations.

23. Very recently, the International Court of Justice in The Hague affirmed that the right to strike is a protected, fundamental activity under international treaties that Canada has signed and ratified.[3]

24. Canada's international obligations regarding the right to strike are well-summarized in a recent published opinion about Bill C-39 by Professor Valerio De Stefano of Osgoode Hall Law School[4]. Those obligations flow from legal instruments including the International Labour Organization conventions to which Canada is a signatory, and the interpretations and pronouncements about those instruments by the ILO's supervisory bodies[5]. Those supervisory bodies interpret the ILO Conventions as permitting restrictions on the right to strike in essential services only where there is danger to life, safety or health of the whole or part of the population. Even

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[2] https://www.canada.ca/en/one-canadian-economy/news/2026/09/cabinet-directive.html

[3] *Right to Strike Under ILO Convention No. 87,* ICJ (2026) Advisory Opinion at para. 139

[4] De Stefano, Valerio, "Opinion: Proposed Section 107 of the Canada Labour Code" (2026). Conference Papers. 38. https://digitalcommons.osgoode.yorku.ca/conference_papers/38 (Traduction française non officielle disponible ici: https://www.unifor.org/fr/ressources/nos-ressources/opinion-projet-de-modification-de-larticle-107-du-code-canadien-du)

[5] De Stefano at p. 3 and following.

where that test is satisfied, less intrusive measures such as the maintenance of negotiated minimum services are more appropriate than banning strikes. Instances of “acute crisis” at a national or local level may also justify restrictions on the right to strike, but only for a limited period and only to the extent necessary to meet the requirements of the situation. Impacts on trade, commerce, or the wider economy do not make services essential.[6]

25. As analyzed by Professor De Stefano, instead of respecting Canada’s minimum international standards, Bill C-39 would give the Minister of Labour an unchecked power under Section 107(2) to bypass Parliament, end a legal strike the minute it starts, and impose binding arbitration based on a troubling, vague, and subjective "national interest" test of the kind that ILO supervisory bodies have said is too broad.[7]

26. It is important to note here that the existing section 87.4 of the Code, enacted in 1999, reflects the view that restrictions on the right to strike ought to be confined to circumstances in which there is an established danger to life, safety or health of the whole or part of the population. Unions and employers are required to agree on what services ought to be maintained to prevent a danger to health and safety. Where they cannot agree, the Canada Industrial Relations Board may determine the issue and order that services be maintained to prevent “immediate and serious danger to the safety or health of the public”. Further, should the Minister question whether the agreement reached by a union and employer is sufficient to prevent an immediate and serious danger to the public, section 87.4(5) provides that the Minister may intervene to refer the matter to the Board. Given that such mechanisms for safeguarding public health and safety already exist in the Code and are not being displaced, the obvious purpose of section 107 is to provide the Minister with the authority to end a strike or lockout even in circumstances where a dispute would pose no threat to the public’s health or safety.

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[6] De Stefano at p. 9.

[7] De Stefano at p. 8.

“Significant impact on the Canadian economy”

27. At a basic level, effective strikes must have an economic impact. A strike without economic impact is pointless.

28. Any attempt to define or quantify the economic harm that would result from a strike or lockout and then use that assessment to justify government intervention is bound to infringe on Canada’s international legal obligations.[8]

29. Moreover, an assessment by the Minister of what is a significant impact on the Canadian economy is necessarily a subjective and political assessment. No criteria are enumerated in the proposed s. 107(3) to limit or define that assessment. It is doubtful whether any objective criteria for such an assessment could be devised.

"Serious social disruption"

30. The notion of "serious social disruption" is even more problematic. It is a concept that is totally unknown in international or domestic labour law and is capable of being interpreted very broadly. Again, an assessment by the Minister of whether a strike is causing (or may cause) a “serious social disruption” will necessarily be a subjective and political assessment. No criteria are enumerated in the proposed section 107(3) to limit or define that assessment, and it is doubtful whether any objective criteria for such an assessment could be devised.

Eliminate the national interest test, and all use of section 107 directives

31. Any attempt to structure a definition of “national interest” in a way that respects international law and the freedom of association is bound to fail. Unifor therefore believes that the proposed use of this national interest test in Bill C-39 as the basis for a Ministerial power to interfere in strikes and lockouts ought to be abandoned. Indeed, the responsibility for interferences in the right to strike ought to remain with Parliament. The recent use of the existing section 107 by Ministers to issue return to work directives enabled the government to avoid enacting *ad hoc* back-to-work legislation. Unlike a Ministerial directive, the enactment of back-to-work legislation requires a

[8] De Stefano at p. 8-9.

democratic process, including Parliamentary debate. It may require mobilizing the support of other parties in the House of Commons. It may require care to achieve a Charter-compliant result. Allowing the government to achieve the same result through a simple Ministerial directive circumvents that Parliamentary scrutiny.

Effect on collective bargaining

32. Unifor's critique of the proposed new section 107 in Bill C-39 is based on Unifor's real world experience in bargaining. Unifor makes collective agreements at the bargaining table. Collective bargaining works precisely because both sides know that a real strike or lockout deadline exists. In over 95% of cases, a deal is reached at the table because of these deadlines. Even in very difficult circumstances, Unifor and other unions achieve negotiated settlements. In post-pandemic bargaining, Unifor members had to fight to keep pace with historic rates of inflation. This resulted in some increased strike activity because employers were not getting the message on affordability and wages. Successful bargaining is getting a deal that both sides agree to, and Unifor was able to reach collective agreements with Bell Canada, major airlines, and logistics companies exactly because those employers knew that our members had the constitutional right to strike.

33. The proposed changes to section 107 will poison that successful bargaining process. The unintended result will be more disputes, and a much broader social and economic impact. Large employers, particularly those that can raise the spectre of supply chain interruptions, will be incentivized to use tactics that undermine collective bargaining in the belief that they can rely on a Ministerial direction to stop a strike. Any such undermining of collective bargaining will result in more industrial conflict, not less.

34. The Government claims it is targeting this extraordinary tool at a small number of bargaining relationships where parties cannot get a deal before the strike deadline. However, there is nothing in the Bill that limits the application of the new section 107 to those units.

35. The availability of a Ministerial power to direct an end to strikes will completely alter employer and union behaviour at the bargaining table. In particular, employers will never put their real bottom line on the table if they know or believe that by stalling through longer conciliation and special mediation, the Minister will declare their industry to be in the national

interest, outlaw a strike in its first hour, and hand the dispute over to an arbitrator. Our rail employers have now spent years lobbying for government to save them from bargaining with their unions. There are examples of employers that have orchestrated a lockout instead of working with unions to solve issues of scheduling, fatigue, and safety. When employers believe the Minister will bail them out, employers refuse to bargain.

36. When the government stays out of the way, we get negotiated settlements. In a recent dispute with DHL Express, that employer had to learn the hard way that the Government was not going to do their bargaining for them. In June 2025, DHL asked the Minister for the kind of intervention that the Minister had granted at Canada Post. Only after it understood that there would not be a Ministerial intervention under section 107 was DHL moved to bargain and soon reach a deal with Unifor. In this and other similar cases, the Government created an expectation of intervention - a problem that Bill C-39 will make worse.

37. On the union side, instead of solving workplace issues, unions will be trapped in a process designed to exhaust members and turn every round of bargaining into a performative audition for a special mediator's report. Every round of collective bargaining could become a mass public political campaign targeted at a single Minister.

38. Unifor can endorse measures that support bargaining in a constructive way, to protect and encourage collective bargaining, and ensure good deals are reached at the bargaining table. Unifor's actual bargaining experience in the federal sector supports this approach, and provides a basis for serious concerns about the wisdom of legitimizing Ministerial interference by way of section 107.