

LABOUR

Federal legislation will increase risk of strikes

As the industry braces for Bill C-58 to come into force next June, contingency planning now is a must

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IN 2023, “the year of the strike,” there were 745 work stoppages across Canada and more than 6.5 million person-days not worked. By comparison, in 2022 there were 157 work stoppages and fewer than 1.9 million person-days not worked.¹

On June 20, 2024, the federal government made matters worse – much worse – when it passed Bill C-58, An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, which will come into force on June 20, 2025.



“There are a multitude of factors to consider, and reconsider, which is why contingency planning can take several months to develop and operationalize. The time to prepare is now”

Sundeep Gokhale, Sherrard Kuz

Bill C-58 will amend the Canada Labour Code (CLC)² to limit the use of replacement workers and implement an expedited process for maintenance of activities agreements for federally regulated businesses.

Bill C-58’s limit on replacement workers will tilt the negotiating balance in favour of unions, which will thereafter have less

incentive to bargain in any meaningful way. The net result may be more frequent and prolonged strikes at unionized, federally regulated businesses.

Further, because federally regulated businesses operate in *significant* industries such as international and interprovincial transportation (air, land, and rail), telecommunications and broadcasting, banking, ports, cross-border tunnels, bridges, pipelines, postal and courier services, and border security (to name a few),

a federal strike can *widely* impact supply chains across the country and the Canadian economy at large.

To prepare for the inevitable, every business that could be materially impacted by a work stoppage at a federally regulated business (including a provincially regulated business) should create a work stoppage

contingency plan. A detailed plan, which should be operational before notice to bargain is given,³ will help ensure operations continue as smoothly as possible, limit economic loss, and maintain key relationships with customers.

Trickle-down impact of a strike

A work stoppage not only directly impacts the business involved but it also has a trickle-down effect on suppliers, customers, and the broader economy. This was made abundantly clear by the 2023 Vancouver Port Strike, one of the most economically impactful work stoppages of that year. The strike by longshore workers lasted 13 days and was estimated to have reduced Canada’s gross domestic product by between \$730 million and \$980 million. In total, \$10 billion of merchandise shipments were impacted. Major shipping delays affected supply chains in virtually every sector across the country including agricultural, automotive, energy, manufacturing, and retail.⁴

Strike contingency planning is therefore essential for any business that could be impacted by a work stoppage.

What will Bill C-58 change?

Limit the use of replacement workers

As of June 20, 2025, a federally regulated employer will be prohibited from using the following classes of people to perform

bargaining unit work during a legal strike or lockout:

1. Any employee, manager, or person employed in a confidential capacity in matters related to industrial relations, hired after notice to bargain was given
2. Any contractor (other than a dependant contractor) or any employee of another employer (i.e., a traditional replacement worker)
3. Any employee whose normal workplace is one other than where the strike or lockout is taking place, who was transferred to the location at which the strike or lockout is taking place after the notice to bargain was given
4. Any employee in the bargaining unit (except for maintenance of activities in compliance with section 87.4 or 87.7 of the CLC)
5. Any volunteer, student, or member of the public

There are two exceptions to these prohibitions:

1. If an employer utilized the services of any contractor or employee of another employer to perform bargaining unit work before notice to bargain was given, it can continue to use those workers during a strike or lockout, but only in the same manner, to the same extent, and in the same circumstances as they were used before notice to bargain was given
2. To address an imminent and serious threat to life, health or safety, destruction of property, or environmental damage and there are no other means to deal with the situation

The penalty to a business for a breach is a fine of up to \$100,000 per day.

Note: An employer may use non-bargaining unit employees or managers to perform bargaining unit work if they were employed at the workplace prior to the date on which notice to bargain was given.

Expedite the process for maintenance of activities agreements

Maintenance of activities applies when the cessation of work during a strike or lockout would result in a *threat to the safety or health of the public that would be immediate or serious*. Bill C-58 expedites the process to determine maintenance of activities and removes certain notice requirements.

Under Bill C-58, as of June 20, 2025, the parties must come to an agreement on maintenance of activities within 15 days from the notice to bargain. If an agreement is reached, it must be immediately filed with the minister of labour and the Canadian Industrial Relations Board (CIRB). If the parties agree no activities must be maintained, that agreement must also be filed with the minister of labour and the CIRB. If no agreement is reached, either party may apply to the CIRB for a determination on maintenance of activities issues. The CIRB must issue a decision within 82 days of that application.

An expedited process may not favour either side to a labour dispute. However, the CIRB has set the bar so high it has been almost impossible for any party to prove a *threat to the safety or health of the public that would be immediate or serious*. An example is the recent work stoppage at CP Rail and CN Rail and the referral to the CIRB brought by the minister of labour. Despite receiving written submissions from 54 affected groups and organizations, many opposed to the work stoppage, the CIRB determined there was insufficient evidence to demonstrate an immediate or serious threat to safety or health.⁵ As a result, the CIRB ruled that if the parties were in a legal work stoppage position, they did not have to maintain activities.

How can a business prepare for Bill C-58?

As noted above, Bill C-58 has the potential to result in more frequent and prolonged strikes among federally regulated businesses and to impact a broad range of other businesses, indirectly.

For a *federally* regulated business, there is no question Bill C-58's limit on replacement workers will make contingency

planning more difficult. However, there are several options that should be explored. For example, before notice to bargain is given, a business could hire additional employees and/or intermingle into the target workplace managers and non-union employees who may work elsewhere in the organization. This requires careful planning and coordination, which cannot happen overnight.

A *provincially* regulated business assessing its risks should consider the following factors (as a starting point):

- Is a federally regulated business a key part of the supply chain?
- Is a federally regulated business located at or near the worksite?
- What is the extent of unionization at the federally regulated business?
- What is the likely impact of a work stoppage on the provincially regulated business?
- What contingency planning (operational and otherwise) can be put into place – hiring, training, redundancies, other locations, etc.?
- How quickly can contingency planning ramp up when needed? For how long? At what cost?

There are a multitude of factors to consider, and reconsider, which is why contingency planning can take several months to develop and operationalize. **The time to prepare is now.**⁶

Sherrard Kuzz LLP has extensive experience assisting clients to design and operationalize strike contingency plans at the federal and provincial levels. To learn more and for assistance, contact Sundeeep A. Gokhale at sgokhale@sherrardkuzz.com or 416-603-6246 or any member of our team at info@sherrardkuzz.com.

¹ Employment and Social Development Canada, "Work stoppages by sector and year" (June 30, 2024), online: Government of Canada <https://www.canada.ca/en/employment-social-development/services/collective-bargaining-data/work-stoppages/work-stoppages-year-sector.html>.

² RSC 1985, c.1-2.

³ This can occur at any time within the four months immediately preceding the expiry of the collective agreement or such longer period as provided in the collective agreement.

⁴ J.A. Sgro, chair of the Standing Committee on International Trade, "The Strike in 2023 at British Columbia Ports: Selected Economic Impacts and Federal Actions" (April 2024), online: House of Commons 44th Parl, 1st Sess <https://www.ourcommons.ca/Content/Committee/441/C11/Reports/RP13042199/citrip18/citrip18-e.pdf>.

⁵ *Canadian Pacific Kansas City Railway v. Teamsters Canada Rail Conference*, 2024 CIRB 1153.