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Legislative Summary

BILL C-58: AN ACT TO AMEND THE CANADA LABOUR CODE AND THE CANADA INDUSTRIAL RELATIONS BOARD REGULATIONS, 2012

Publication No. 44-1-C58-E

27 June 2024

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For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

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Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-58: AN ACT TO AMEND THE CANADA LABOUR CODE AND THE CANADA INDUSTRIAL RELATIONS BOARD REGULATIONS, 2012

1 BACKGROUND

Bill C-58, An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012,[1] was introduced in the House of Commons on 9 November 2023 by the Honourable Seamus O'Regan, Minister of Labour and Seniors.

Bill C-58 amends Part I of the *Canada Labour Code* (CLC)[2] to, among other things, revise the scope of the prohibition relating to the use of replacement workers during a legal strike or lockout and modify the maintenance of activities process to encourage employers and trade unions to enter into agreements relating to the activities that must be continued during a legal strike or lockout. The bill also makes consequential amendments to the *Canada Industrial Relations Board Regulations, 2012* (CIRB Regulations).[3]

Following its consideration of the bill, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)[4] adopted several amendments. Bill C-58, as amended by HUMA, was concurred in by the House of Commons on 22 May 2024 and was passed at third reading on 27 May 2024. The HUMA amendments to the bill include:

- expanding the scope of the prohibition on replacement workers to include employees from another workplace, volunteers, students and members of the public;
- requiring that, in the exceptional cases where replacement workers may be used to perform necessary work, employees in the bargaining unit on strike or locked out be first given the opportunity to perform the work;
- requiring that, at the end of a strike or lockout, employees in the bargaining unit who were on strike or locked out be reinstated in preference to any other person (not just in preference to replacement workers, as was previously indicated in the bill);
- reducing the time limit for the Canada Industrial Relations Board (CIRB or the Board) to determine an application or referral related to a maintenance of activities agreement or to make an order, from 90 to 82 days after receipt; and
- reducing the coming-into-force timeline of the bill from 18 to 12 months after Royal Assent.

The bill, as adopted by the House of Commons, was passed in the Senate without further changes on 17 June 2024 and received Royal Assent on 20 June 2024.

1.1 FEDERAL INDUSTRIAL RELATIONS

Part I of the CLC "governs workplace relations and collective bargaining between unions and employers." It includes provisions on "dispute resolution, strikes and lockouts" as well as "the labour relations rights and responsibilities of employers, trade unions and employees."[5] It applies to federally regulated private sectors (such as air transportation, telecommunications and banks) as well as private-sector firms and municipalities in Yukon, the Northwest Territories and Nunavut.[6] According to a 2023 Employment and Social Development Canada (ESDC) backgrounder, approximately 22,350 employers and 1,030,000 employees across Canada are covered by Part I of the CLC.[7] Part I does not, however, apply to the federally regulated public sector (including the public service and Parliament).[8]

1.2 REPLACEMENT WORKERS IN FEDERALLY REGULATED INDUSTRIES

The CLC permits employers covered by Part I to temporarily replace workers during a strike or lockout to continue operations, provided that they are not being used "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives" (section 94(2.1)). A replacement worker is someone who is assigned the work of an employee that is on strike or locked out and is either not in the bargaining unit that is striking or locked out, or is in the bargaining unit, but was hired after bargaining began.[9]

At the end of the strike or lockout, the employer is required to reinstate employees who were on strike or locked out, in preference to replacement workers (section 87.6 of the CLC). ESDC estimates that between 2012 and 2023, federally regulated employers used replacement workers in 42% of strikes and lockouts.[10]

If a person or organization believes that an employer is illegally using replacement workers, a complaint may be submitted to the CIRB.[11] The CIRB is an independent administrative tribunal that hears complaints, applications and appeals related to the CLC, the *Status of the Artist Act*[12] and the *Wage Earner Protection Program Act*.[13] It is established by section 9 of the CLC and is governed by sections 9 to 22 of the CLC as well as the CIRB Regulations. If the CIRB receives a complaint related to the illegal use of replacement workers, it has the authority to issue an order for the employer to stop using replacement workers for the rest of the strike or lockout and may make other orders as necessary.[14]

As Part I of the CLC (including provisions related to replacement workers) applies only to federally regulated private sectors and certain employers in the territories, the majority of workers in Canada are covered by provincial or territorial employment standards legislation. At the provincial level, the use of replacement workers is prohibited only in British Columbia and Quebec.[15]

1.3 MAINTENANCE OF ACTIVITIES

Maintenance of activities requirements are outlined in section 87.4 of the CLC, with section 87.4(1) stating that during a strike or lockout, the employer, trade union and employees in the bargaining unit are required to "continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public."

Section 87.4 also establishes the process by which an employer and bargaining agent shall determine, after notice to bargain has been given, what essential services must continue to be provided. If the employer and bargaining agent cannot come to an agreement, either of the parties may make an application to the CIRB to identify which essential services must continue, with the burden of proof falling on the party seeking to maintain the services.

If the parties obtain dispute resolution assistance from the federal government, the Minister of Labour may also refer questions to the CIRB pertaining to the supply of essential services.

In response to either the application of the parties or a question of the minister, the CIRB may issue an order designating, among other things, the supply of the services it deems essential (section 87.4(6)).

1.4 RECENT EVENTS

In budget 2023, the federal government committed to

> [tabling] amendments to the *Canada Labour Code*, before the end of 2023, that would prohibit the use of replacement workers during a strike or lockout, and improve the process to review activities that must be maintained to ensure the health and safety of the public during a work stoppage.[16]

Advancing legislation to prohibit the use of replacement workers was also listed in the 2021 mandate letter for the Minister of Labour, specifically in the case of lockouts.[17]

Between 19 October 2022 and 31 January 2023, ESDC conducted consultations with employers, employees and the public on the issue of replacement workers[18] and on the maintenance of activities process under the CLC.[19] The department released the resulting report in September 2023.[20]

2 DESCRIPTION AND ANALYSIS

Bill C-58 contains 18 clauses; only key clauses are discussed in the following section.

2.1 REPLACEMENT WORKERS (CLAUSES 3, 4, 7, 9 TO 14, AND 15)

2.1.1 Prohibition on the Use of Replacement Workers

Clause 9(1) of Bill C-58 repeals section 94(2.1) of the CLC, which prohibits the use of replacement workers "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives."

Clause 9(2) adds new sections 94(4) to 94(8) to prohibit the use of replacement workers and to provide clarifications in this regard.

Specifically, new section 94(4) of the CLC establishes that an employer or person acting on behalf of an employer cannot use the services of "any employee or any person who performs management functions or who is employed in a confidential capacity in matters related to industrial relations, if that person is hired after the day on which notice to bargain collectively is given" (section 94(4)(a)) or "any contractor, other than a dependent contractor, or any employee of another employer" to perform the duties of an employee in the bargaining unit that is on strike or locked out (section 94(4)(b)). It also prohibits the use of "any employee whose normal workplace is a workplace other than that at which the strike or lockout is taking place or who was transferred to the workplace at which the strike or lockout is taking place after the day on which notice to bargain collectively is given" (section 94(4)(c)) as well as "any volunteer, student or member of the public" (section 94(4)(d)).[21] The use of these types of replacement workers was permitted previously.

New section 94(5) clarifies that if a contractor (other than a dependent contractor) or another employer's employee was used before the day on which notice to collectively bargain was given, and the worker was providing services that were the same or substantially similar to the duties of an employee in the bargaining unit, those services may still be used during the strike or lockout provided the services are used in the same manner, to the same extent and in the same circumstances as before the notice was given.

New section 94(6) indicates that during a strike or lockout intended to involve the cessation of work by all employees in a bargaining unit, the employer may not use the services of an employee in the bargaining unit, unless for the purposes of compliance with certain provisions relating to the maintenance of activities.

Clause 9(2) also adds new section 94(7) to the CLC. This section outlines an exception to the prohibition on the use of replacement workers in cases where

the services are used only to deal with a situation that could result in threat to life, health or safety or in certain forms of destruction or serious damage (new sections 94(7)(a)(i) to 94(7)(a)(iii)). It specifies that use of the services must be necessary to deal with the situation because the employer cannot deal with it by other means – for example, by using the services of another person (new section 94(7)(b)). In addition, an employer may use replacement workers only after giving the employees in the bargaining unit on strike or locked out the opportunity to perform the necessary work (new section 94(7)(c)).[22] Further, new section 94(8) clarifies that the exception may be used only for the purposes outlined and not to continue the supply of services, operation of facilities or production of goods.

Clause 10 is a related amendment that reflects new sections 94(4) and 94(6) in existing section 99(1)(b.3) of the CLC, which authorizes the CIRB to make an order requiring an employer to stop using the services of replacement workers during a dispute.

2.1.2 Employees Not in the Bargaining Unit

Section 29(1.1) of the CLC clarifies which employees are not in a bargaining unit. Clause 4 of Bill C-58 amends this section to specify that a person whose services are being used contrary to the new prohibition on the use of replacement workers is not an employee in the unit.

2.1.3 Reinstatement

Section 87.6 of the CLC indicates that the employer must reinstate employees in the bargaining unit who were on strike or locked out in preference to replacement workers. Clause 7 amends this section to require that employees in the bargaining unit who were on strike or locked out be reinstated "in preference to any other person."[23]

2.1.4 Non-compliance

2.1.4.1 Complaints

Clause 11 of Bill C-58 adds new section 99.01(1) to the CLC to indicate that if a complaint is made to the CIRB about an employer's non-compliance with the new rules prohibiting the use of replacement workers, the CIRB must assist the parties to settle or determine the complaint, and issue a Board order if applicable, within a time limit prescribed by regulation or, if no time limit is prescribed, as soon as is feasible.

Clause 13 of Bill C-58 adds new section 111(g) to the CLC, authorizing the Governor in Council to make regulations prescribing a time limit in this regard as well as rules respecting the jurisdiction of the CIRB and the validity of its decisions or orders made after the time limit.

Clause 11 also adds new section 99.01(2) to the CLC, which indicates that the CIRB must send a copy of its decisions and any order to the parties and to the Minister of Labour within the time limit.

2.1.4.2 Offences

Clause 12 of Bill C-58 adds new section 100.1 to the CLC to establish that, if an employer contravenes the rules on the prohibited use of replacement workers introduced in new sections 94(4) and 94(6), the employer is liable on summary conviction to a fine of up to $100,000 for each day on which the offence is committed or continued.

2.1.4.3 Violations

Clause 14 of Bill C-58 adds new section 111.01(1), which authorizes the Governor in Council to make regulations to establish an administrative monetary penalties scheme to promote compliance with the prohibited use of replacement workers outlined in new sections 94(4) and 94(6). Specifically, the Governor in Council may make regulations designating that the contravention of these new sections is a violation (new section 111.01(1)(a)), as well as regulations regarding:

- the administrative monetary penalties that may be imposed for a violation – including the amount or range of amounts that may be imposed on employers or classes of employers, the factors to be taken into account when imposing an administrative monetary penalty, the payment of administrative monetary penalties that have been imposed and the recovery of unpaid administrative monetary penalties as a debt (new sections 111.01(1)(b)(i) to 111.01(1)(b)(iv));
- the persons or classes of persons who are considered party to the violation, and the amount or range of amounts of administrative monetary penalties for which they are liable (new section 111.01(1)(c));
- what constitutes sufficient proof that a violation was committed (new section 111.01(1)(d));
- the powers, duties and functions of the CIRB and of any person or class of persons who may exercise powers or perform duties or functions with respect to the monetary penalties scheme, including the designation of such persons or classes of persons by the CIRB (new section 111.01(1)(e));
- the proceedings in respect of a violation – including commencing the proceedings, the defences that may be available and the circumstances in which proceedings may be ended (new sections 111.01(1)(f)(i) to 111.01(1)(f)(iii)); and
- reviews or appeals of any orders or decisions in the proceedings (new section 111.01(1)(g)).

Section 22(1) of the CLC indicates that any order or decision of the CIRB under Part I may not be questioned or reviewed in court unless in accordance with specific grounds under the *Federal Courts Act*. Clause 3 amends this section to indicate that this restriction is subject to regulations made under new section 111.01(1)(g), mentioned above.

Clause 14 of the bill also adds new section 111.01(2), which clarifies that in cases where an act or omission could be treated as either an offence or a violation, it may be proceeded with as one or the other but not both so as to avoid punishing a party twice for the same conduct.

2.1.5 Consequential Amendments to the *Canada Industrial Relations Board Regulations*

Clause 15 of Bill C-58 amends section 14(f) of the CIRB Regulations to include the prohibited use of replacement workers, as outlined in new sections 94(4) and 94(6) of the CLC, among the matters in which an expedited process applies.

2.2 MAINTENANCE OF ACTIVITIES (CLAUSES 1, 2, 5, 6 AND 8)

2.2.1 Requirements Relating to a Maintenance of Activities Agreement

Section 87.4(2) of the CLC sets out an option for an employer or trade union, within 15 days after notice to bargain collectively has been given, to advise the other party about the supply of services, operation of facilities or production of goods it believes must continue during a strike or lockout. Under clause 6(1) of Bill C-58, section 87.4(2) is amended to provide that, within the same time frame, an employer and a trade union must enter into a maintenance of activities agreement.

The maintenance of activities agreement must also set out the manner and extent to which the employer, trade union and employees in the bargaining unit must continue the supply, operation and production provided by amended section 87.4(2)(a), including the approximate number of employees that would be needed for this purpose (new section 87.4(2)(b)).

Clause 6(1) of Bill C-58 also adds new section 87.4(2.1) to clarify that if the employer and trade union conclude it is not necessary to continue any supply of services, operation of facilities or production of goods, this conclusion must be set out in the agreement.

Prior to Bill C-58, section 87.4(3) of the CLC indicated that in cases where an agreement has been entered into, either the trade union or the employer may file a copy of the agreement with the CIRB. Once filed, it has the same effect as an order of the CIRB. Clause 6(1) of Bill C-58 amends section 87.4(3) to require that

the employer and trade union file a copy of the agreement with the Minister of Labour and with the CIRB immediately after entering into the agreement.

2.2.2 Role of the Canada Industrial Relations Board

Clause 6(1) amends section 87.4(4) of the CLC to require that, if no maintenance of activities agreement has been reached within 15 days of the notice to bargain collectively and the trade union or employer has made an application to the CIRB, the CIRB must determine any question related to the application. Prior to Bill C-58, section 87.4(4) required the CIRB to determine questions upon application but did not include the 15-day time limit to enter into a maintenance of activities agreement imposed by the bill. Under amended section 87.4(5) of the CLC, the minister may also refer to the CIRB any question relating to whether the agreement between employer and trade union meets maintenance of activities requirements under section 87.4(1).

Clause 6(3) of Bill C-58 adds new sections 87.4(6.1) to 87.4(6.4) to the CLC. New section 87.4(6.1) indicates that the CIRB must determine an application or referral, or make an order, within 82 days of receipt.[24]

Under new section 87.4(6.2), if the CIRB fails to comply with this time limit, the CIRB still has jurisdiction to continue with and determine the application or referral. An order or decision made by the Board after this time limit is not rendered invalid for this reason.

New section 87.4(6.3) clarifies that the CIRB may exercise any of its powers under Part I of the CLC to ensure to the extent possible that it complies with the time limit.

Under new section 87.4(6.4), if an employer and trade union enter into and file an agreement before the CIRB has determined an application one of them previously made in relation to the same matter, the application is set aside.

In addition, clause 1 of Bill C-58 amends section 12.001(1) of the CLC to permit the chairperson of the CIRB to appoint an external adjudicator to determine any matter that comes before the CIRB in relation to the maintenance of activities.

Clause 2 adds new section 16(m.2) to the CLC to grant the CIRB the power "to make any order and give any direction that the Board considers appropriate for the purpose of expediting proceedings or preventing an abuse of process."

2.2.3 Notice or Declaration of a Strike or Lockout

Clause 5 of Bill C-58 adds new section 87.2(4) to the CLC to indicate that a strike notice, a lockout notice or a new notice (needed in cases where no strike or lockout occurs on the date indicated in a strike or lockout notice, and the trade union or employer wishes to initiate a strike or lockout) may be given only if:

- the trade union and the employer have entered into a maintenance of activities agreement and a copy has been filed with the Minister of Labour and the CIRB; or
- in cases where the trade union and employer have not entered into a maintenance of activities agreement, the CIRB has determined an application made by either party.

Clause 8 amends section 89(1)(e) of the CLC, which stated that a strike or lockout cannot be declared unless the CIRB has determined any corresponding application or referral pertaining to the maintenance of activities. This section is amended to require only that the CIRB have determined referrals, not applications.

2.3 TRANSITIONAL PROVISIONS AND COMING INTO FORCE (CLAUSES 17 AND 18)

Clause 17(2) indicates that new or amended provisions related to maintenance of activities – namely sections 12.001(1), 87.2(4) and 87.4(2) to 87.4(5), the portion of section 87.4(6) before paragraph (a), sections 87.4(6.1) to 87.4(6.4) and section 89(1)(e) of the CLC, as enacted by clauses 1, 5, 6 and 8 – apply in respect of any collective bargaining if the notice to bargain collectively is given on or after the day on which Bill C-58 comes into force.

Clause 17(3) indicates that sections 22(1), 29(1.1), 87.6, 94(4) to 94(8), 99(1)(b.3) and 99(1)(b.4), 99.01, 100.1, 111(g) and 111.01 of the CLC, as enacted by clauses 3, 4 and 7, as well as sections 9(2) and 10 to 14, apply as of the day on which the bill comes into force in respect of any strike or lockout that is ongoing on that day.

Clause 18 of Bill C-58 indicates that the bill comes into force in the 12th month after it receives Royal Assent, either on the same calendar day that it received Royal Assent or, if the month has no day with that number, on the last day of the month.[25]

NOTES

1. Bill C-58, An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012, 44th Parliament, 1st Session. The Charter statement for Bill C-58 was presented on 28 November 2023. See Government of Canada, *Charter Statement – Bill C-58: An Act to amend the Canada Labour Code and the Industrial Relations Board Regulations, 2012*, 28 November 2023.

2. *Canada Labour Code*, R.S.C. 1985, c. L-2.

3. *Canada Industrial Relations Board Regulations, 2012*, SOR/2001-520.

4. House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA), *Bill C-58, An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012*, Twenty-First Report, 22 May 2024.

5. Employment and Social Development Canada (ESDC), "Part 1: Industrial relations," *Overview of the parts of the Canada Labour Code and how they apply to your workplace*.

6. Government of Canada, *List of federally regulated industries and workplaces*.

7. ESDC, *Amendments to the* Canada Labour Code *to prohibit the use of replacement workers and improve the maintenance of activities process*, Backgrounder.

8. Government of Canada, *List of federally regulated industries and workplaces*.

9. ESDC, *Prohibiting replacement workers in federally regulated industries – Discussion paper*.

10. ESDC, *What we heard: Prohibiting replacement workers in federally regulated industries and improving the maintenance of activities process under the* Canada Labour Code *– Final Report*, September 2023, p. 1.

11. ESDC, *Prohibiting replacement workers in federally regulated industries – Discussion paper*.

12. *Status of the Artist Act*, S.C. 1992, c. 33.

13. *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1; and Canada Industrial Relations Board, *About the Board*.

14. ESDC, *Prohibiting replacement workers in federally regulated industries – Discussion paper*.

15. British Columbia, *Labour Relations Code*, R.S.B.C. 1996, c. 244, s. 68; and Quebec, *Labour Code*, CQLR c. C-27, s. 109.1.

16. Department of Finance Canada, *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023, p. 101.

17. Prime Minister of Canada, Justin Trudeau, *Minister of Labour Mandate Letter*, 16 December 2021.

18. ESDC, *Prohibiting replacement workers in federally regulated sectors: Closed consultation*.

19. ESDC, *Improving the maintenance of activities process under the Canada Labour Code: Closed consultation*.

20. ESDC, *What we heard: Prohibiting replacement workers in federally regulated industries and improving the maintenance of activities process under the* Canada Labour Code *– Final Report*, September 2023.

21. During committee consideration of Bill C-58, HUMA amended clause 9(2) of the bill to add new sections 94(4)(c) and 94(4)(d) to the *Canada Labour Code*.

22. During committee consideration of Bill C-58, HUMA amended clause 9(2) of the bill to add new section 94(7)(c) to the *Canada Labour Code*.

23. In the first reading version of Bill C-58, clause 7 amended section 87.6 of the *Canada Labour Code* to require the reinstatement of employees in the bargaining unit that is on strike or locked out in preference to any person "whose services were used contrary to subsection 94(4)" (the prohibition on replacement workers introduced by the bill). During its consideration of the bill, HUMA amended clause 7 to require that these employees be reinstated "in preference to any other person."

24. In the first reading version of Bill C-58, the time limit for the Canada Industrial Relations Board to determine an application or referral or to make an order was 90 days (new section 87.4(6.1), added by clause 6(3)). During its consideration of the bill, HUMA amended clause 6(3) to shorten this time limit to 82 days.

25. In the first reading version of Bill C-58, the coming into force timeline for the bill, per clause 18, was 18 months after Royal Assent. During its consideration of the bill, HUMA amended clause 18 to shorten this to 12 months.