

January 31, 2023

Employment and Social Development Canada
Labour Program

Via Email - ESDC.NC.LABOUR.CONSULTATIONS-TRAVAIL.NC.EDSC@hrsdc-rhdcc.gc.ca

Re: Prohibiting replacement workers in federally regulated industries – Discussion paper

1. CWTA is an industry association representing companies that provide services and products across the wireless communications sector in Canada, including facilities-based mobile wireless network operators and equipment vendors. We advocate on behalf of the wireless sector and promote the contributions that the sector makes to Canada, including innovation, economic growth, social well-being, and sustainability. We also facilitate industry initiatives, such as enhancing accessibility, charitable giving, and consumer protection.
2. Canada's telecommunications industry, including the wireless sector, has not only transformed the way in which Canadians communicate, work, and play, it also plays a significant role in the Canadian economy, fueling economic growth and innovation. In 2021 alone, the telecommunications industry directly contributed \$74.9 billion to Canada's GDP and supported over 650,000 jobs¹ across industry sectors.
3. Furthermore, Canadians increasingly rely on wireless services, which have become an integral part of their daily lives. As of Q2 2022, there were over 33.9 million mobile phone subscriptions in Canada². Whether to stay in touch with family and friends, consume content, or work while on the move, wireless service has become indispensable for most Canadians.
4. CWTA strongly opposes a federal ban on replacement works, such as that proposed in the Government discussion paper, Prohibiting replacement workers in federally regulated industries (Discussion Paper). A replacement worker ban is unsupported by available data and would have significant negative consequences on the Canadian economy and individual Canadians. More particularly, the proposed ban is inconsistent with the public interest in – and government commitment to – the reliability and resiliency of telecommunications networks in Canada. Indeed, the fundamental importance of network reliability and resiliency was highlighted by the Minister of Industry's introduction of a Telecommunications Reliability Agenda in September 2022.

¹ [CWTA | Facts & Figures](#)

² [CWTA | Facts & Figures](#)

5. The Telecommunications Reliability Agenda represents the Government's express commitment to using a range of tools to advance the reliability and security of telecommunications networks. Given that a ban on the use of replacement workers in the telecommunications industry would be fundamentally incompatible with Government priorities for telecommunications networks, and potentially harmful to actions taken by the Government and industry in connection with those priorities, a ban on replacement workers would be inappropriate and problematic, as discussed in more detail below.

Anti-Replacement Worker Legislation is Unnecessary and Unsupported by the Data

6. The proposed federal ban on replacement workers is unnecessary and seeks to resolve a problem that does not exist. Existing anti-replacement worker legislation (summarized below in para. 7) has been successful in preventing violence from occurring on picket lines between striking employees and replacement workers. Accordingly, this is simply not an issue that would justify adopting anti-replacement worker legislation for all federally regulated workplaces.
7. The current legal framework applicable to replacement workers under the *Canada Labour Code* (Code) is based on tripartite discussions (labour, employers and Government) and achieves appropriate balance, as follows:
 - Workers have the right to engage in legal strikes, during which time they receive tax free strike pay and are free to seek alternate employment.
 - Employers may use replacement workers during lawful work stoppages. Employers may do so to maintain the viability of their business by providing goods and services to customers, to maintain market share, and to cover fixed and variable costs. They may also do so to put pressure on a union for the purpose of achieving bargaining objectives. This is counterbalanced by: (1) replacement workers not being considered members of the bargaining unit and being excluded from representation votes, and (2) the requirement for striking/locked out workers to be reinstated prior to any replacement workers once a work stoppage concludes.
 - Employers may not use replacement workers for improper and illegal purposes, such as to undermine the union's representational capacity. Attempting to do so is a prohibited unfair labour practice subject to sanctions by the Canada Industrial Relations Board (the "CIRB").
8. Laws should only be changed to address problems. Canada does not have a problem with the use of replacement workers. Under the existing framework governing replacement workers, which as been in place for over 20 years, employers have used replacement workers in several federally-regulated industries, including the air, rail and marine transportation sectors, as well as the telecommunications sector. Despite this, there have been very few cases in which a union has even alleged that an employer has violated the replacement worker provisions of the Code, and the CIRB has not issued a single decision in which an employer was found to have in fact done so. This is clear evidence that there

is simply no problem for the proposed ban on replacement workers to address, so it should not be enacted.

9. Advocates for such a prohibition allege that it would reduce the impact of strike and lockout activity, benefitting workers and the economy. However, the overall data contradicts their contentions. This fact is even noted in the Discussion Paper, which acknowledges that the “majority of [studies examining whether prohibiting replacement workers affects how often strikes and lockouts occur and how long they last] suggest that when a province prohibits replacement workers, this is associated *with more frequent strikes and lockouts, at least in some sectors*” (emphasis added). It is further noted that only a single study found that a ban on replacement workers reduced the average strike length, but only for a period of two (2) years after which it returned to normal. Moreover, other studies suggest that provinces that prohibit replacement workers have a lower employment rate on average.
10. Notably, a 2010 CD Howe study titled, ‘The Laws of Unintended Consequences’ found that a ban on replacement workers increased both the number (15% increase) and the duration (60% increase) of strikes. This study also saw a strong correlation between the incidence of anti-replacement worker legislation and reduced job creation. In fact, this study noted that the “removal of current temporary replacement worker bans would increase employment by 47,000 jobs in British Columbia and by 80,000 jobs in Quebec”, the only two Canadian jurisdictions to have anti-replacement worker legislation in effect. Interestingly, the study found that although workers’ wages do increase temporarily after the implementation of anti-replacement worker legislation, “the longer-term effect is to reduce wages, perhaps as a result of the long-term decreases in employment or investment because of the negative long-term effects of such bans on the economy”.

Anti-Replacement Worker Legislation Will Negatively Impact Canadians

11. The proposed ban on the use of replacement workers by federally regulated employers will, if implemented, increase the risk of shutdowns and, at a minimum, incite and increase serious disruptions to critical infrastructure services that Canadians depend on in their day-to-day lives, including telecommunications services. The provision of telecommunications services is fundamental to the safety and well-being of Canadians and to the Canadian economy. As such, the operation of telecommunications networks should not be impeded, even during lawful work stoppages – particularly given that there are already safeguards in place around the use of replacement workers, as described above.
12. Moreover, the proposed federal ban on replacement workers is bad policy for Canadian businesses, workers and consumers. As noted in its final report in 1999, the Sims Commission, which undertook a comprehensive review of Part I of the Code, concluded that replacement workers “can be necessary to sustain the economic viability of an enterprise in the face of a harsh economic climate and unacceptable demands [and that it] is important that in a system of free collective bargaining that employers maintain that option, unrestrained by any blanket prohibition”. If a business cannot financially survive a strike or lockout, particularly in the face of such circumstances, everyone loses – the employer who is eventually forced to shutter operations, the workers who ultimately have

no job to come back to, and Canadians who no longer have access to the business' products or services on the market.

13. Finally, such a prohibition would lead to a serious imbalance in labour relations in the federal sector with far-reaching negative impacts, including but not limited to: increases in the likelihood and duration of strikes; increased costs of collective bargaining settlements for employers - which can ultimately impact the costs of goods and services for Canadians – a highly undesirable result in this period of high inflation in which Canadians are already challenged by high prices, higher interest rates and a volatile market for their investments and savings; the creation of a confrontational labour relations climate; and an increased likelihood of the need for back-to-work legislation to address work stoppages impacting the delivery of critical products and services.
14. Most employers in the federal sector are large companies with long-standing, mature bargaining relationships with unions. Labour and management know how to work effectively with one another within the current legal framework and the existing balance serves to minimize negative consequences on Canadians. This is evidenced by the fact that there is already limited strike activity in the federally regulated sector, with only 29 strikes having occurred between 2017 and 2021.

Anti-Replacement Worker Legislation Will Negatively Impact the Telecommunications Sector

15. From the standpoint of the telecommunications sector, the proposed federal ban on replacement workers is highly problematic.
16. As noted in the introduction above, the implementation of legislation that could severely curtail or halt a telecommunications service provider's (or "TSP") operations in the event of a lawful work stoppage is contrary to the Government's focus on the importance of ensuring the availability of telecommunications services and the security of critical telecommunications systems.
17. The Government's new Telecommunications Reliability Agenda comprises of a series of actions (many of which are actively being developed) to ensure the ability of Canadians to access secure and reliable telecommunications, particularly in times of emergencies. These actions include directing TSPs to reach an agreement regarding emergency mobile wireless roaming, agreements for mutual assistance in certain circumstances, and a communications protocol to ensure effective communications between TSPs and the public and governmental authorities during telecommunications emergencies or similarly impactful disasters. The Telecommunications Reliability Agenda has, additionally, resulted in a detailed process involving the creation of a CSTAC sub-group, known as the Canadian Telecommunications Network Resiliency Working Group (on which a wide range of TSPs and government representatives participate) to develop detailed recommendations aimed at ensuring network reliability and resiliency in response to network outages. The Telecommunications Reliability Agenda also includes Bill C-26, an act that would, among other things, amend the *Telecommunications Act* such that the Minister or Governor-in-

Council could order TSPs to take any action that they consider necessary to secure the Canadian telecommunications system.

18. It is conceptually irreconcilable for the government to, on one hand, take extensive and detailed steps to ensure the reliability and resiliency of Canada's telecommunications networks while concurrently considering a ban on the use of replacement workers that would effectively impair the operations of telecommunication networks. This is even more confounding when such a ban would disrupt the long-standing balance of bargaining power between employers and employee that has been effective in ensuring well-functioning relationships between employers and employees in unionized federally regulated work settings. Permitting the reliability and resiliency of our networks – which are fundamental to the safety and well-being of Canadians and to Canada's economy - to be compromised in the context of a strike is simply insupportable.
19. In practical terms, the Government's efforts to avoid and/or mitigate harm to the safety, prosperity and well-being of Canadians that can result from disruptions to telecommunication services and cybersecurity threats would be seriously undermined by the proposed ban on replacement workers were a network outage to occur during a work stoppage. For example, when natural disasters such as hurricanes strike Canada, TSPs often require a 24/7 "all hands" approach to prepare for the impending event and to restore telecommunications systems as soon as it is safe to do so. If the Government ties TSP's hands with a complete prohibition on the use of replacement workers in federally regulated industries, TSPs' ability to prevent, prepare for, and respond to network outages should they coincide with a strike or lockout, would be severely compromised. The resulting negative consequences – from the inability to call 911 for help in an emergency to the financial losses suffered by impacted individuals and businesses – are likely to be significant.
20. Furthermore, the maintenance of activities requirements in the Code do not (as some might be propose) obviate the risks of anti-replacement worker legislation (as noted above), or the broader negative impacts of any such legislation on the telecommunications public policy objectives (discussed below). Such provisions are limited to dealing with public health and safety concerns and are far too narrow in scope to mitigate the risks outlined herein.
21. Finally, as mentioned above, the economic concerns arising from a prohibition on replacement workers – i.e., longer and more frequent strikes, reduced job investment, lower wages in the long-term, and the overall financial impact on Canadians and Canadian businesses – would have particularly negative impacts in the context of the telecommunications sector. Any resulting negative impact on TSPs' businesses is likely to impair TSPs' ability to deliver on the Government's telecommunication policy objectives of fostering continued private sector investment in the expansion and enhancement of telecommunications networks and greater affordability.

Conclusion

22. CWTA opposes the proposed federal ban on replacement workers. The proposed ban seeks to address a problem that does not exist, but instead risks significant harm to the Canadian economy. It also runs counter to the Government's focus on the importance of ensuring the availability of telecommunications services and the security of critical telecommunications systems.
23. If, notwithstanding the lack of supporting evidence for the need for a ban on replacement workers, the Government continues to consider such a ban, it should be subject to thoughtful parameters developed in consultation with key stakeholders that would mitigate the concerns raised herein, including exceptions for the telecommunications industry.

-End of Submission-