

April 17, 2024

Ariane Calvert

Clerk

Standing Committee on Human Resources, Skills and Social Development and the Status
of Persons with Disabilities

Sixth Floor, 131 Queen Street

House of Commons

Ottawa ON

K1A 0A6

**Re Appearance before the Standing Committee on Human Resources, Skills and
Social Development and the Status of Persons with Disabilities**

Dear Ms. Calvert,

Please find enclosed our opening statement and our recommendations for amendments
to Bill C-58, An Act to amend the Canada Labour Code and the Canada Industrial Relations
Board Regulations, 2012.

Sincerely,



Robert Ghiz

President and CEO

Canadian Telecommunications Association

Good morning. My name is Robert Ghiz. I am President and CEO of the Canadian Telecommunications Association. Our senior vice president, Eric Smith, is joining me today.

We appreciate the opportunity to appear before you to discuss Bill C-58.

When Bill C-58 was introduced, we expressed our concern that the bill seeks to address a problem that does not exist and, for the reasons given to the Committee by FETCO last week, should not become law. While our position in this regard has not changed, if Parliament decides to pass the bill, it must first be amended to address an issue that should concern all Canadians, including members of this Committee.

Canadians rely on telecommunications services every day, and the security and reliability of networks have never been more important. To quote the Government of Canada:

Not only do [telecommunications services] support a wide range of economic and social activities, but they support other critical infrastructure sectors and government services, and are crucial for emergency services and public safety. They are fundamental to the safety, prosperity, and well-being of Canadians.

Il en va de même pour les services de radiodiffusion et de télévision, qui jouent un rôle essentiel pour assurer la sécurité publique au Canada.

Ces services sont essentiels pour la population canadienne. En cas de panne causée par des catastrophes naturelles, des actes de vandalisme ou d'autres facteurs, les consommateurs s'attendent à ce que leurs fournisseurs et leurs équipes travaillent sans relâche pour rétablir ces services. C'est exactement ce qui se passe aujourd'hui.

The prohibition on the use of replacement workers in Bill C-58 would significantly weaken service providers' capacity to restore services and protect their networks from disruption during a strike or lockout.

While some argue that requiring employers and the bargaining unit to establish a maintenance of activities agreement before a strike or lockout will mitigate the negative effects of the prohibition on replacement workers, this viewpoint is flawed.

While section 87.4 of the Code requires the parties to continue the supply of services “to the extent necessary to prevent an immediate and serious danger to the safety or health of the public”, the Canadian Industrial Relations Board has previously ruled that section 87.4 does not apply to a potential interruption of telecommunications services during a strike or a lockout.

Nor are the limited exceptions to the prohibition on replacement workers under the proposed amendments to section 94 of the Code sufficient to ensure the continuity of telecommunications and broadcasting services during a strike or lockout.

Mr. Chair, I know you are intimately familiar with the devastation Hurricane Fiona caused in Prince Edward Island and its surrounding provinces. Imagine if telecom workers had been on strike when the storm hit our province. Under Bill C-58, the affected telecom providers could not use striking workers with the necessary experience and skills to protect and restore services or hire temporary replacement workers or contractors. This would have been unacceptable to Atlantic Canadians and should be unacceptable to Parliament.

Experts predict 2024 could be one of the most active Atlantic hurricane seasons on record. Climate scientists say they are bracing for what could be another year of devastating wildfires across Canada. Cybersecurity threats are on the rise.

Compromising our telecommunication and broadcasting systems' reliability, resilience, and security in the context of a strike or lockout undermines the extensive and detailed steps taken by the government under its

Telecommunications Reliability Agenda. It also runs counter to Canadians' expectations that these critical services be there for them when they need them most.

While we respect the right to strike, there must be a balance between workers' rights and the public good.

We ask the Committee to recommend to Parliament that Bill C-58 be amended to ensure that during a strike or lockout, service providers, their employees, and their bargaining units must continue providing services necessary to repair and restore telecommunication and broadcasting services and to perform critical maintenance work.

The amendment would be like one made by Parliament to ensure that labour disputes in the long-shoring industry do not interrupt the movement of grain vessels.

We have provided the Committee with wording for the suggested amendment and a couple of other amendments that we ask the Committee to consider. We would be happy to discuss these during the remainder of this meeting.

Je vous remercie de nous avoir donné cette occasion d'exprimer notre position sur ce sujet d'importance. Je serai heureux de répondre à vos questions.

- End of Statement -

Canadian Telecommunications Association – Recommendations for amendments to Bill C-58 – An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

Our recommendations for amendments to Bill C-58, set out below, supplement the Association's appearance before the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. We would be pleased to discuss the proposed amendments further with the Committee and address any questions it may have.

Recommendation No.1:

Include a new provision 87.8 to the Code to ensure that, during a strike or lockout, telecommunications and broadcasting service providers, their employees, and their bargaining units must continue providing services necessary to repair and restore telecommunication and broadcasting services and perform critical maintenance work.

Below, we explain why section 87.4 is not sufficient to ensure the continuance of services necessary to repair telecommunication and broadcasting services and perform critical maintenance. A draft of a recommended amendment follows.

CIRB has concluded s.87.4 does not cover service outages

As referenced in our opening statement to the Committee, in *Aliant Telecom Inc. v. Council of Atlantic Telecommunications Unions*¹ the Canadian Industrial Relations Board considered the meaning of section 87.4 (Maintenance of activities) of the Canada Labour Code. The union argued that its members were not obligated to provide any services during a strike or lockout to ensure that no immediate and serious danger to the health or safety of the public results. The employer disagreed and asked the Board to determine what services must continue under section 87.4.

The Board found that although a disruption to telecom services could pose a threat to the safety and health of the public, such disruption required an intervening event such as “an act of God (such as a hurricane or ice storm), a random act of vandalism or accident (such as a vehicle crashing into a pole or a farmer digging where he shouldn't), or an intentional

¹ *Aliant Telecom Inc.*, [2003] C.I.R.B. L.D. No. 947 [*Aliant Telecom*]

Canadian Telecommunications Association – Recommendations for amendments to Bill C-58 – An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

attempt to repair or maintain a system or facility (such as a software patch/upgrade or a technicians cut-over).”²

It concluded that it was not the intent of 87.4 that the Board consider such intervening events or possibilities³ but rather only consider “the foreseeable impact of a strike or lockout on the health or safety of the public within a reasonable time after the commencement of the labour dispute.”⁴

Because it would be the intervening event that causes the disruption to telecom services, and not the strike or lockout, the Board found that a maintenance of activities agreement was not required as there was not a sufficient “immediacy or the required nexus, between a strike or lockout and the possible interruption of telecommunications services or the loss of telecommunications platforms, to support a finding by the Board that a strike or a lockout could result in the immediate and serious danger to the safety or health of the public.”⁵

It is important to emphasize that the Board agreed that telecommunication service disruptions could threaten the public's health and safety. However, it concluded that the wording of section 87.4 limits its consideration to only whether the strike or lockout could foreseeably cause such disruption. In the opinion of the Board, the possibility that severe weather events, vandalism, or other events could result in service outages is not within the scope of section 87.4 and does not require the continuation of employee services.

Labour reaction to Alliant Telecom

Reference was made at the Committee meeting on April 11th, 2024, that in 2003 TELUS had entered into a maintenance of activities agreement with a union that would provide for the continuance of services to ensure that critical services like 911 remained operational. This was cited as evidence that section 84.7 requires a maintenance of activities agreement that addresses our concerns regarding the repair and critical maintenance of telecommunications and broadcasting services during a strike or lockout.

² Ibid. paragraph 34

³ Ibid. paragraph 43

⁴ Ibid. paragraph 43.

⁵ Ibid., paragraph 44

Canadian Telecommunications Association – Recommendations for amendments to Bill C-58 – An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

Such maintenance of activities agreement was entered into before the Board issued its decision in *Aliant Telecom*. Furthermore, we note that in the 2004 Board decision *Telecommunications Workers Union v TELUS Communications Inc.*⁶ the Board stated that the union was “frustrated” at having entered into the maintenance of activities agreement now that the Board had concluded in *Aliant Telecom* that “the possible interruption of telecommunication services does not constitute an immediate and serious danger to the safety or health of the public”.⁷ The Board further explained that the union “considers that the signing of the agreement has weakened its bargaining position and has caused it to be criticized by its membership...”⁸

The decision in *Aliant Telecom* makes clear that section 87.4 is insufficient to ensure that telecommunications and broadcasting services that Canadians rely upon daily can be repaired and receive critical maintenance during a strike or lockout.⁹ To remedy this situation, we recommend that Bill C-58 include a new provision that requires employers and their employees to ensure the continuity of telecommunications and broadcasting services during a strike or lockout.

Suggested New Section 87.8:

The provision can be modelled on the section 87.7 of the Canada Labour Code, which states, in part, that:

During a strike or lockout...an employer in the long-shoring industry...its employees and their bargaining agent shall continue to provide the services they normally provide to ensure the tie-up, let-go and loading of grain vessels...

The suggested wording for the new provision is as follows:

⁶ *TELUS Communications Inc.*, [2004] C.I.R.B.L.D. No.271

⁷ *Ibid.* paragraph 91.

⁸ *Ibid.*

⁹ Similarly, the proposed new subsections 94(7) and (8) provide a very limited right for employers to use replacement workers (existing employees that are not members of the affected bargaining unit). Based on the Board’s interpretation of section 84.7, together with the words “conservation purposes” in 94(8) and “not for the purpose of continuing the supply of services, operation of facilities...” it appears that such right not include the right to use replacement workers to repair telecommunication and broadcasting services or continue critical maintenance services. If Parliament’s intent is that such subsections is to allow the use of replacement workers for such purposes, then the proposed subsections require significant amendment. We welcome the opportunity to discuss this matter further with the Committee.

Canadian Telecommunications Association – Recommendations for amendments to Bill C-58 – An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

87.8 (1) During a strike or lockout not prohibited by this Part, an employer in the telecommunications or broadcasting industry, or other industry included in paragraph (a) of the definition of federal work, undertaking or business in section 2, its employees and their bargaining agent shall continue to provide the services they normally provide to ensure the timely repair and restoration of telecommunication and broadcasting services and the performance of critical maintenance of such services.

It is further recommended that the new 87.8 include obligations that are similar to amendments being introduced in Bill-58 to section 84.7 that would require the parties to enter into an agreement governing the services that must be required under the new 87.8(1), authorize the Board to determine any question with respect to the application of 87.8(1), and that a strike or lockout cannot commence until such agreement is reached.

Recommendation No.2:

Amend the transitional provisions so that the prohibitions on using replacement workers only apply to strikes or lockouts if the related notice to bargain collectively is given on or after the day Subsection 17(3) comes into force.

Subsection 17(3) of Bill C-58 provides that the prohibitions on the use of replacement workers during strikes or lockouts (proposed new subsections 94(4) to (8)) would apply “as of the day on which this section comes into force in respect of any strike or lockout that is ongoing on that day.”

This means that if a strike or lockout began before the amendments in Bill C-58 came into force, and is continuing when the Act comes into force, the employer would automatically become subject to the new prohibitions on using replacement workers. The legitimate and legal contingencies it put into place when the strike or lockout began would suddenly become illegal. This would materially and unfairly alter the balance in bargaining positions mid-negotiation and would encourage employees and bargaining agents to delay and frustrate negotiations knowing that the employer’s ability to conduct business will be hampered once the Act comes into force.

If, as has been stated by the government, the amendments to the maintenance of activities provisions in Section 87.4 are meant to provide a counterbalance to the new prohibitions

Canadian Telecommunications Association – Recommendations for amendments to Bill C-58 – An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

on the use of replacement workers, then it is only appropriate that both of these provisions come into effect only with respect to situations where the notice to bargain collectively is given on or after the day that the Act comes into force.

For the reasons above, Subsection 17(3) of Bill C-58 should be revised to read as follows:

Prohibitions – uses of services during strikes and lockouts

(3) Subsections 22(1) and 29(1.1), section 87.6, subsections 94(4) to (8), paragraphs 99(1)(b.3) and (b.4), sections 99.01 and 100.1, paragraph 111(g) and section 111.01 of the *Canada Labour Code*, as enacted by sections 3, 4 and 7, subsection 9(2) and sections 10 to 14, respectively, apply in respect of any strike or lockout if the related notice to bargain collectively is given on or after the day on which this section comes into force.

Recommendation No.3:

The maximum fines for a contravention of the prohibition on the use of replacement workers (proposed subsection 94(4) or (6)) should be lowered and the Committee should make recommendations for the regulations made pursuant to subsection 111.01(1) regarding the factors that the Board must consider when imposing fines.

Section 100.1 of Bill C-58 provides that employers who contravene the proposed new subsection 94(4) or (6) are liable to fines not exceeding \$100,000 per day during which the offence is committed or continued. This is significantly higher than the fine for similar violations under provincial labour laws, such as Quebec where the fine is \$1000 per day.

The risk of potential significant fines is exacerbated by the fact that the proposed new subsections 94(4) and (6) are qualified by exceptions which have not yet been considered or interpreted by the Board. Just as the meaning of “immediate and serious danger to the safety or health of the public” under Section 87.4 has been subject to uncertainty and resulting litigation, the scope and meaning of the exceptions under the proposed subsection 94(7) are also unclear. This is evident because the drafters of Bill C-58 included a “for greater certainty” provision in the proposed subsection 94(8). Unfortunately, that provision raises as many questions as it answers.

Canadian Telecommunications Association – Recommendations for amendments to Bill C-58 – An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012

The result is that an employer, acting in good faith, might think they are acting in compliance with section 94 only to find out many weeks or months later that the Board disagrees.

For the reasons above, the maximum fine should not exceed \$10,000 per day. In addition, the Committee should recommend to the Governor in Council that the regulations include factors that the Board must consider when assessing fines. These factors should include whether the contravention was based on a novel interpretation by the Board of subsection 94(7) or 94(8) and the employer's ability to pay such fines.