

The Proposed Federal Ban on the Use of Replacement Workers During a Strike

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The recent federal employee strike resulted in the temporary closing of certain government services and highlighted an issue with respect to the use of replacement workers during a strike or lockout.

Strikes are a common tool used by unions to put pressure on employers during negotiations. In Canada, unionized employees have the right to go back to their jobs when a strike or lockout ends and cannot be permanently replaced. However, for many private employers, closing their business during a strike would be devastating. To mitigate the economic impacts of a strike, most employers in Canada are permitted to use temporary replacement workers during a strike.

The use of replacement workers during labour strikes has long been a contentious issue, with advocates emphasizing the need to keep businesses running and opponents raising concerns with respect to labour rights and often taking the position that the use of replacement workers intensifies tensions and violence on the picket lines and can prolong strikes.

Currently, only two provinces – British Columbia and Quebec – ban the use of replacement workers during a strike. However, that will soon change for federally regulated employers.

Under the recent Federal Budget tabled in March 2023, the government proposed amending the *Canada Labour Code* to prohibit federally regulated employers from the use of replacement workers during a strike or lockout, stating the following:

The ability to form a union, bargain collectively, and strike is essential to a healthy democracy. These important rights can be undermined when an employer brings in replacement workers to temporarily do the work of unionized workers during a strike or lockout.¹

No legislation has been tabled with respect to the ban, so we do not know whether the proposed amendment would include any exceptions similar to the legislation in British Columbia, which allows an exception for the use of other workers at the same location to perform unionized work, or in Quebec, which allows for managers to perform the unionized work.

However, it is clear that the recently proposed ban signals a commitment from the federal government to enhance labour rights and will give more leverage to unions in federally regulated workplaces to impact

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employers through strikes. The government has indicated an intention to put the prohibition in place by the end of 2023.

¹ Page 101 of the 2023 federal budget

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