

Brief Submitted by the *Ordre des conseillers en ressources humaines agréés du Québec* and CPHR Canada on Bill C-39: Strengthening Accountability and Clarifying the Scope of Exceptional Measures to Preserve Balanced Labour Relations

Ordre des conseillers en ressources humaines agréés de Québec

Bringing together more than 12,000 professionals in human resources management and industrial relations, the Ordre des conseillers en ressources humaines agréés ("the Ordre") is the benchmark for HR management practices in the province of Quebec. It ensures the protection of the public by supervising the profession, maintaining the skills of certified human resources professionals (CPHR) and certified industrial relations professionals (CIRP), preparing the next generation, and through its public interventions aimed at raising awareness and equipping all stakeholders in the world of work.

With a unique and holistic perspective on the business world, the Ordre is interested in the concerns and issues that impact employers and employees. It plays a major role in influencing the world of work in Québec and thus actively participates in maintaining the balance between the success of organizations and the well-being of the workforce, always in the general interest of society.

CPHR Canada

CPHR Canada represents 31,000 members in the Human Resources Profession across nine provinces and three territories in Canada. Established in 1994, CPHR Canada is the national voice on the enhancement and promotion of the HR Profession. With an established and credible designation and collaboration on national issues, CPHR Canada is proactively positioning the national human resources agenda and representing the Canadian HR Profession internationally.

Introduction

This brief presents the joint reflections and recommendations of the *Ordre des conseillers en ressources humaines agréés du Québec* (the Ordre) and CPHR Canada to the legislator regarding Bill C-39, *An Act respecting certain measures to strengthen the economy*. This brief focuses exclusively on Part 3 of the Bill, the part entitled, *A Strong Canada for All Canadians*, which mainly amends the Canada Labour Code.

Part 3 of Bill C-39 deals primarily with the legislative regime governing labour-management relations applicable to federally regulated businesses. Most federally regulated employers operate in the banking, transportation, telecommunications sectors, and also include Crown corporations. According to the latest census, 1,020,000 employees are subject to this regime across Canada¹, including approximately 187,000 in Quebec².

Labour relations are at the heart of human resources professionals' practice and are one of their fundamental pillars. Due to their role in supporting employers and employees, HR professionals hold a privileged position in the analysis of the legislative framework for labour relations. Their practice contributes to establishing and maintaining healthy, fair and constructive labour relations through an approach based on dialogue, conflict prevention and resolution. They strive to balance organizational needs with employee's rights and interests. They establish, negotiate and manage individual or collective agreements and employment contracts daily, while ensuring compliance with relevant legislation. As such, the evolution of the legislative and regulatory framework in the world of work is of direct concern to the profession, both in terms of its impact on the workplace and its effects on the quality of relations between actors in the world of work.

Like the government, we believe that good labour relations are essential to the strength of the economy and to the quality of life of citizens. **The public policy contributions of CPHR Canada and the Ordre reflect a shared commitment to fostering healthy, productive, and respectful workplaces, while promoting a legislative framework that preserves an appropriate balance of power in labour-management relations and supports lasting industrial peace.** It is with this in mind that the Ordre and CPHR Canada propose recommendations, based on their own expertise and informed by consultations with experts in the field, as well as by an analysis of the relevant scientific literature.

1. The main principles for a legislative framework ensuring industrial peace and the performance of organizations.

¹ <https://www.canada.ca/fr/emploi-developpement-social/ministere/rapports/evaluations/normes-du-travail-evaluation-2026.html>

² <https://www.canada.ca/fr/patrimoine-canadien/organisation/transparence/gouvernement-ouvert/comite-permanent/petitpas-taylor-langues-officielles-mars2022/langes-entreprises-privées-quebec-pq.html>

CPHR Canada and the Ordre adhere to fundamental principles that must guide any labour-management relations regime and the analysis of any proposed legislative change.

First, the legislative framework must ensure that the balance of power between the employer and unions is maintained in order to promote industrial peace. This balance is fragile and fluctuates over time and is influenced by the demographic, economic, political and social context. Nevertheless, the legislative framework should not confer an undue advantage on either party; any legislation that is likely to alter this balance must therefore be analyzed with caution.

Second, it is important to preserve the primacy of free collective bargaining. A negotiated agreement is always preferable to other solutions. To this end, the parties must have sufficient independence and flexibility in shaping their position.

These first two principles involve the recognition of the right to strike or lockout. A strike or lockout is evidence of an impasse, or even a failure of negotiations. The right to strike is an essential component of freedom of association. Obstacles to strike must be limited as much as possible. A lockout that falls within the legislative framework remains the exercise of an employer's rights.

1.1. Government Intervention

It is understood that the role of the government is to establish the framework that guarantees these conditions. Since the state also has a responsibility to protect the population and a labour dispute can have significant repercussions, its intervention can be justified within a legitimate and circumscribed framework. For example, the government can facilitate the negotiation and resolution of a dispute while remaining impartial towards the parties. When the government imposes a return to work or mandatory arbitration, it undermines free collective bargaining, alters the balance of power between the parties, and restricts the exercise of the right to strike, as well as the use of lockouts. Such interventions can have lasting effects on work climate and may compromise the ability of organizations to reach their full potential, to the detriment of both employers and employees. CPHR Canada and the Ordre believe that government intervention to impose a return to work or mandatory arbitration, while undesirable, may be justified in certain extraordinary circumstances. The law must ensure that such intervention remains exceptional, and is subject to a clear, predictable, independent and transparent processes.

2. Article 315: Early Bargaining Prior to the Expiry of the Collective Agreement

Article 315 of Bill C-39, which introduces section 50.1 to the Canada Labour Code, now requires parties to enter into negotiations within 20 days, between the 200th and 180th day before the expiration date of the current agreement. This new obligation applies to collective agreements that result from a binding method imposed on the parties, a work stoppage by strike or lockout, or that are five years or longer. The parties are also required to cooperate with the Federal Mediation and Conciliation Service (FMCS).

CPHR Canada and the Ordre consider this provision to be an improvement in the labour relations regime, likely to promote the negotiated settlement of disputes and reduce labour disputes. Over time, some workplaces may develop a belief that a work stoppage is unavoidable, or that it is a normal step in the renewal of collective agreements. Such a dynamic can encourage the parties to wait for pressure tactics to be exercised and delay meaningful engagement in negotiations. From this perspective, section 50.1 encourages early dialogue, with the support of a neutral third party, which could prevent an escalation of tensions.

Nevertheless, the Ordre and CPHR Canada believe that the presence of a neutral third party should only be mandatory if the last collective agreement is the result of imposed arbitration or if one of the parties requests it. Therefore, the services of the FMCS should not be mandatory for parties who have reached an agreement voluntarily, whether or not they have used strikes or lockouts.

The conclusion of a negotiated agreement, without binding arbitration, demonstrates the ability of the parties to settle their differences and find a mutually acceptable compromise. The Ordre and CPHR Canada are of the opinion that parties who have freely negotiated a collective agreement are autonomous organizations and should be presumed capable of negotiating and determining whether the involvement of a neutral third party is necessary. The fact that a negotiation has been punctuated by a dispute leading to a work stoppage should not systematically deprive the parties of their decision-making autonomy. With few exceptions, organizations should be left with the responsibility of building and maintaining good labour relations.

Recommendation 1: Amend proposed section 50.1 so that engagement of the Federal Mediation and Conciliation Service should only be mandatory at the request of one of the parties when a previous agreement was preceded by a strike or lockout, but not imposed by arbitration.

3. Article 333: Post-Conflict Relationship Restoration Measures

Article 333 of Bill C-39, which adds section 105.1 to the Canada Labour Code, requires both parties to undertake a labour-relations restoration process when the collective agreement is the result of a binding method imposed on the parties, or where negotiations have been marked by a strike or lockout.

The imposition of a collective agreement through an enforceable mechanism, particularly if it is the result of ministerial intervention, can adversely affect the work climate and have consequences on the productivity of the organization as well as on the well-being of employees. Parties may feel that they have been aggrieved by the imposed result and consider it unjustified. There is no guarantee that the disputes that gave rise to the dispute will be perceived as resolved. In such cases, the obligation to use the FMCS to initiate a process to restore labour relations seems appropriate.

Strikes and lockouts can accentuate existing tensions during collective bargaining. Strikes and lockouts are legitimate economic pressure tactics intended to express dissatisfaction and encourage the other party to make concessions that it would not necessarily have made otherwise. Their use can thus leave its mark on labour-management relations, in particular by fueling discontent and mistrust. The use of a process to restore relations after a work stoppage is a good practice that the Ordre and CPHR Canada encourage in order to promote the reopening of dialogue and rebuild a climate of trust.

Nevertheless, strikes and lockouts remain legitimate pressure tactics that are part of the free collective bargaining process. The obligation established in section 105.1(b) seems disproportionate. By applying the same principle to this section as was applied to section 50(1) in recommendation 1, we believe that parties who have demonstrated their ability to reach a free agreement should be able to determine their method of reconciliation. Moreover, mandatory participation is not a guarantee of success in the absence of real adherence to the process. Thus, we believe that participation in this process should only be mandatory if one of the parties requests it. The FMCS's resources will thus be better devoted to disputes that have required compulsory arbitration and to parties who voluntarily request it.

Recommendation 2: Amend proposed section 105.1 so that, where a collective agreement has been freely negotiated following a strike or lockout and has not been imposed through a binding dispute resolution mechanism, recourse to the relationship restoration process through the Federal Mediation and Conciliation Service (FMCS) is mandatory only at the request of one of the parties.

4. Articles 334 and 335: Section 107 and Government Intervention

4.1. Quantitative and Qualitative Intensification of the Use of Section 107

Through article 334, Bill C-39 substantially amends section 107 of the Canada Labour Code, which currently states that:

"The Minister, where the Minister deems it expedient, may do such things as to the Minister seem likely to maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences and to those ends the Minister may refer any question to the Board or direct the Board to do such things as the Minister deems necessary." Section 107 has been in existence since 1984 in the Canada Labour Code but was used infrequently by governments before 1996. Between 1996 and 2023, we have identified three attempts by Ministers of Labour to use this section, which have not been completed.

In 1996, the Minister of Labour, Alfonso Gagliano, asked the Canada Labour Relations Board (CLTB)³ to order members of the Canadian Auto Workers (CAW) union to vote on the restructuring proposal put forward by the management of Canadian Airlines International, which was then struggling financially. Union representatives refused to put the proposal to a

³ Now known as the CIRB, Canada Industrial Relations Board.

vote of their members. Nevertheless, the parties were able to reach an agreement before section 107 came into force.

In 2011, Labour Minister Lisa Raitt invoked section 107 to ask the CIRB whether certain activities should be maintained to ensure the health and safety of the public, while Air Canada was in dispute with the flight attendants' union. Both parties agreed to binding arbitration even before the CIRB had ruled.

In 2023, in the context of the dispute between the British Columbia Maritime Employers Association (BCMEA) and the International Longshore and Warehouse Union (ILWU), Minister Seamus O'Regan invoked section 107 to ask the CIRB whether it was appropriate to order binding arbitration or impose a new collective agreement on the parties. A few days later, the two parties reached an agreement before section 107 applied.

Beginning in 2024, and particularly during the eight months of Steven MacKinnon's tenure as Minister of Labour, there has been an increase in the use of section 107, both quantitatively⁴ (eight times) and on the scope of the intervention. Depending on the the dispute, section 107 has been invoked to force a return to work, extend the collective agreement and impose binding arbitration⁵.

Faced with an increasing use of the section, unions have challenged it in court using a variety of strategies. The Teamsters Canada Rail Conference is currently challenging the use of section 107 in court, with the outcome still pending. The Port of Quebec Longshoremen's Union (*Syndicat des débardeurs du port de Québec*) challenged the directive before the CIRB extending the process long enough to allow for an agreement between the two parties before section 107 was applied. In 2025, flight attendants, represented by the Canadian Union of Public Employees, refused to comply with the return-to-work order. Currently, there is no court ruling on the merits of whether the Minister can actually order an end to a strike on the Minister's own initiative, under existing provisions⁶. Faced with an application for a stay, the Federal Court recently recognized that the legality of such a ministerial directive constituted a "serious question", without ruling on the merits of the case⁷.

The increase in the use of section 107 since 2024, both in terms of the frequency and scope of the measures imposed as well as the resulting legal challenges, reflects a political interventionist tendency in labour relations. Additionally, it highlights the tensions that may arise within the federal labour relations regime when it is used. Faced with this evolution and considering the current wording of this section, which confers broad power on the Minister, the Ordre and CPHR Canada believe that it is necessary to better define section 107 to ensure respect for the constitutional rights of the parties and that its use remains truly exceptional.

⁴ Seven times under Minister McKinnon, once for his predecessor O'Regan..

⁵ During this period, the government led by Justin Trudeau was a minority at the time, which theoretically made it more difficult to impose special legislation to force a return to work.

⁶ Flynn MAKEKA, *Mémoire sur le projet de loi n° 89 – Loi visant à considérer davantage les besoins de la population en cas de grève ou de lock-out*, 20 mars 2025, p. 14.

⁷ *Syndicat des débardeurs du port de Québec (SCFP, section locale 2614) c. Canada (Procureur général)*, 2024 CF 2043.

4.2. Special Law

It is important to note that Parliament can already, through special legislation, impose a return to work, the extension of a collective agreement, and binding arbitration. This mechanism, which is governed by the requirement to obtain the approval of both Houses of Parliament, must be taken into account in the analysis of Bill C-39. The last time such special legislation was passed by the House of Commons was in 2021 during the dispute between the Maritime Employers Association and the Port of Montreal Longshoremen's Union. Despite a minority government, the Bill went through all stages of the legislative process in four days.

In addition, the Canada Labour Code already includes a specific framework for activities to be maintained to prevent an imminent and serious risk to the health or safety of the public.

Considering the existing levers, some might wonder why section 107, as it has been used in recent years, is necessary.

Without commenting on this issue, the Ordre and CPHR Canada believe that regardless of the path chosen, protection mechanisms must curb the temptation to politicize labour disputes.

4.3. Article 334: Adding Tags to Section 107 and Defining the National Concern

Through article 334 of the Bill, the Ordre and CPHR Canada recognize the government's intention to set limits on the use of section 107.

Nevertheless, although it adds a framework that did not exist until now, this definition remains vague and thus appears insufficient with regard to the fundamental principles that govern healthy labour relations: maintaining the balance of power between management and unions, the primacy of free collective bargaining, the right to strike and lockout, and the exceptionality of ministerial intervention.

4.3.1. Scope of Section 107

First, the proposed articles to section 107 clarify that section 107 can be invoked for (1) the resumption of activities, (2) the extension of a collective agreement and (3) binding arbitration. It is important to note that this amendment would enshrine the broad scope given by Minister MacKinnon in recent years in law, thus formalizing this practice.

4.3.2. Conditions and Factors to Consider

On the other hand, the section introduces new preconditions for the application of the Minister's power. The Minister must have reviewed the Special Mediator's report and considered that the prejudicial impact of the work stoppage on the national interest is sufficient. It should be noted that the national interest is not defined and that the assessment of this concept could vary from one Minister to another depending on their political allegiances. Thus, according to the understanding of the Ordre and CPHR Canada, the Minister can then use section 107 with

little constraint since the Minister is the only one to judge whether, and to what extent, the strike or lockout causes harm to the national interest.

Second, subsection 107(3) states that the Minister may (and therefore is not obligated) take into account any factor, including:

- Real or potential significant impact on the Canadian economy;
- Real or potential serious social disruption;
- The impact of its decision on freedom of association.

It is therefore left to the Minister to consider the factors proposed by this addition. We believe that any use of section 107 that would force the resumption of activities and mandatory arbitration would most likely be challenged in the courts. Specifically, it may be challenged with respect to freedom of association, but also with respect to the definition of the concept of the national interest and the concepts in subsection 107(3) of "significant economic impact", "serious social disruption" and "potential".

In this regard, it seems necessary to clarify the national interest by using indicators of what constitutes significant economic repercussions and serious social disruptions. A strike or lockout are pressure tactics aimed at causing economic and social repercussions. The Minister cannot avoid specifying the extent to which these are considered "significant" or "serious" justifying an intervention. The same is true of the notion of "potential", which suggests that the Minister can act prior to the repercussions and disruptions, thus accentuating the need for justification.

It is also crucial to note that, by using the adjectives "significant" for the economic component and "serious" for the social component, the government is making a clear choice to facilitate an intervention for economic rather than social reasons. In line with their analytical posture and balanced vision, the Ordre and CPHR Canada believe that the degree of risk should be the same in both cases.

CPHR Canada and the Ordre believe that the Minister should be required to consider the factors in paragraphs 3a, 3b and 3c of section 107 when deciding whether to use it. To do so, the Minister may have to justify the decision in a publicly available report setting out how the Minister believes that the actual or potential economic impact or social disruption is detrimental to the national interest when using section 107, and the impact of the decision on the right of association under the Canadian Charter of Rights and Freedoms as well as Canada's obligations under international law. This report could then be based on the analysis conducted by Employment and Social Development Canada, referred to in the government's background on the Bill.

Requesting that the Minister justify the decision ensures that it was not based solely on political or circumstantial considerations and would promote an informed democratic debate on the ministerial decision.

Recommendation 3: In paragraph 3 of Article 107, harmonize the adjectives "significant" and "serious" so as not to place greater weight on economic impacts than on social disruption.

Recommendation 4: Amend paragraph 107(3) by replacing "may" with language providing that the Minister may consider any relevant factor, but must consider either paragraph (a) or paragraph (b), and must consider paragraph (c).

Recommendation 5: In order to avoid an overly broad definition of the national interest, identify, by regulation, the key indicators against which social and economic impacts will be assessed.

Recommendation 6: Add to section 107 a fourth paragraph outlining the obligation for the Minister to produce a public report, concurrent with the directive to the CIRB, justifying the decision under paragraph 3 when using section 107.

4.4. Article 322: Method of Appointment of the Special Mediator under section 107

Bill C-39 allows the Minister to appoint a special mediator at any time, but no later than the seventy-fifth day after the date of appointment of a conciliator⁸. In practice, since the conciliator is appointed within 15 days of receiving a notice of disagreement sent to the Minister, the special mediator can intervene early on in the negotiation process. The special mediator plays a central role in the new process for using section 107. The special mediator files a report no later than 21 days, or without delay when the parties reject an agreement in principle. This report contains the parties' positions in their dispute, the likelihood that they will conclude, renew or revise a collective agreement within a reasonable time, and recommendations. The report is submitted to the Minister and made public five days later. The Minister uses this report to analyze the situation and decide whether to invoke section 107.

The special mediator can then have a significant influence on public opinion and on the Minister's propensity to order a return to work or to end a lockout. A large part of the report is based on the special mediator's analysis, on an assessment of the parties' positions, and methods of negotiation. In this new regime, the special mediator is a central player.

For CPHR Canada and the Ordre, since the intervention of the special mediator can lead to a forced resumption of activities, it is crucial that the special mediator be able to carry out the mandate independently. This special mediator can therefore act as a bulwark against political action. However, some may question the special mediator's independence, since it is the Minister who will appoint the special mediator, without any other control measures⁹. The same applies to the special mediator's remuneration, which may be set by the Minister¹⁰. Although the appointment of a special mediator by the Minister does not necessarily compromise the mediator's impartiality. However, the fact that the powers to appoint and determine

⁸ Article 322 of the law stipules "conciliation officer", "conciliation commissioner", or a "conciliation board".

⁹ Article 322 of C-39 adding article 87.01 paragraph 1 to the Canada Labour Code.

¹⁰ Article 322 of C-39 adding article 87.01 paragraph 4 to the Labour Code.

remuneration are concentrated in the hands of the political authority called upon to make a decision on the basis of the mediator's report may weaken the perception of the independence of the process.

Instead, the special mediator could be appointed by the Canada Industrial Relations Board (CIRB), at the request of the Minister. Since the CIRB is composed of representatives of employers, labour representatives, and members appointed by the government, it has a structure that is more likely to appoint a person garnering broader consensus. The term of office of the members (three to five years) ensures a certain independence from the Minister in office.

Recommendation 7: Amend section 87.01(1) added by article 322 of Bill C-39 to provide that the Minister may [...] ask the CIRB to appoint a special mediator for a period of twenty-one days.

5. Article 321: A First Collective Agreement

The Ordre and CPHR Canada recognize the importance of facilitating the conclusion of a first collective agreement within a reasonable time. The nine-month period, as provided for in article 321 of the Bill, seems appropriate. It allows either party to request that the CIRB to impose a binding method of settlement after nine months. While this provision constitutes a constraint on free collective bargaining, it applies to both employers and unions. We believe that it is reasonable that, in the case of a first collective agreement, one of the parties should be able to make this request. Nevertheless, while bearing in mind that ministerial intervention in the right to strike and lockout should be limited to exceptional circumstances, we do not believe that paragraph 4 of section 80 is necessary.

In this regard, the Quebec regime offers an interesting example of a mechanism that facilitates the conclusion of a first collective agreement without automatically suspending pressure tactics. Under sections 93.1 and subsequent articles of the Quebec Labour Code, a party may request that the dispute be referred to arbitration after the unsuccessful intervention of a conciliator. However, the right to strike and lockout remains until the arbitrator informs the parties in writing that the negotiations are at an impasse. This mechanism allows the parties to continue their negotiations and exercise their pressure tactics, while benefiting from the intervention of a third party to help find a solution.

The Quebec experience shows that it is possible to provide for an effective dispute resolution mechanism without prematurely withdrawing the parties' pressure tactics. The Ordre and CPHR Canada invite the federal legislator to draw inspiration from this approach in order to preserve the balance of power and to favour the conclusion of freely negotiated agreements.

Recommendation 8: Delete the addition of paragraph 4 to section 80 to the Canada Labour Code proposed in article 321.

Conclusion

CPHR Canada and the Ordre recommend a series of significant amendments to Bill C-39, particularly to the provisions amending the Canada Labour Code. Guided by the principles of maintaining the balance of power between employers and unions, the primacy of free collective bargaining, and the exceptional nature of ministerial intervention, we are proposing eight recommendations aimed at further limiting ministerial intervention in labour disputes involving federally regulated employers, in order to uphold the fundamental rights protected by the *Canadian Charter of Rights and Freedoms*. In doing so, we also preserve the possibility of ministerial intervention where it is warranted by consideration of the broader public interest.

Summary of Recommendations

Recommendation 1: Amend proposed section 50.1 so that engagement of the Federal Mediation and Conciliation Service should only be mandatory at the request of one of the parties when a previous agreement was preceded by a strike or lockout, but not imposed by arbitration.

Recommendation 2: Amend proposed section 105.1 so that, where a collective agreement has been freely negotiated following a strike or lockout and has not been imposed through a binding dispute resolution mechanism, recourse to the relationship restoration process through the Federal Mediation and Conciliation Service (FMCS) is mandatory only at the request of one of the parties.

Recommendation 3: In paragraph 3 of Article 107, harmonize the adjectives "significant" and "serious" so as not to place greater weight on economic impacts than on social disruption.

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Recommendation 7: Amend section 87.01(1) added by article 322 of Bill C-39 to provide that the Minister may [...] ask the CIRB to appoint a special mediator for a period of twenty-one days.

Recommendation 8: Delete the addition of paragraph 4 to section 80 to the Canada Labour Code proposed in article 321.