



December 15, 2025

## **FETCO Submission to Senate Committee on Transport and Communications**

*Study on the Maintenance of Activities or Essential Services in the Federally Regulated Rail and Marine Sectors in the Case of Labour Disruptions*

### **Introduction**

FETCO thanks the Senate Committee on Transport and Communications for undertaking this important study and for the opportunity to provide input.

FETCO represents private-sector employers in Canada's federally regulated industries, including major railways, ports, courier companies, airlines, and financial institutions all of which operate under the Canada Labour Code.

Collectively, these sectors generate over **\$543 billion annually**, accounting for **16.5 percent of Canada's GDP**, and employ more than **2.1 million Canadians**, roughly **12 percent of the national workforce**, with wages that are, on average, **45 percent higher than the national average**.

These employers are the kinetic pillars of Canada's economy. They move goods, people, capital, energy, and information across the country and to global markets. Together, they form the backbone of Canada's domestic and international supply chains. In short, every other sector of the economy depends on their reliability.

### **Reliability at Risk**

That reliability is increasingly at risk.

Over the past two years, Canada has experienced **more than 60 transportation-related work stoppages**, eroding investor confidence, increasing costs, and fraying public trust as Canadians grow increasingly fatigued by labour disruption.

Looking ahead, several major collective agreements are set to expire across critical industries such as rail, ports, air, and integrated logistics and delivery networks.

In today's unsettled geopolitical and trade environment, stability and reliability are prerequisites for investment. Persistent labour uncertainty threatens not only domestic operations, but Canada's credibility as a trusted economic partner.

At the same time, the federal government has articulated an ambitious nation-building and economic reform agenda that depends heavily on federally regulated sectors. Yet these sectors continue to operate under a

collective-bargaining framework that has not kept pace with the scale, integration, and economic significance of modern supply chains.

Reforms to the Canada Labour Code have largely been reactive and piecemeal, resulting in rigidity, operational inefficiencies, and higher costs that ultimately dampen investment and job creation. It is in this context that FETCO welcomes the Committee's study.

### **Core Principles**

FETCO's views are grounded in three core principles.

**First, Employers believe in collective bargaining and the right to strike.** Employers strongly support good-faith collective bargaining and the right to strike as foundational to a healthy labour relations system. We believe the best and most durable agreements are the ones freely negotiated by the parties at the table.

**Second, Arbitration is a last resort, not a strategy or a preferred outcome.** Employers are not looking for government to rescue negotiations or to "run out the clock" to force intervention. Employers want agreements reached through good-faith bargaining. Nobody wants a third party, who may not fully understand the business or the workplace, holding the pen on their collective agreement.

**Third, when nationally critical sectors are at stake, the framework must include a credible public-interest backstop.** Most federally regulated disputes are resolved without a work stoppage. The challenge lies in the small number that arise in sectors where disruption can cascade across supply chains and impose costs on other workers, businesses, and communities far removed from the bargaining table.

In those rare but high-impact circumstances, government needs a modern, balanced framework that keeps parties bargaining, respects the right to strike, and protects the economy when national supply chains and critical services are at risk.

### **Principles for Any Future Intervention Tool**

FETCO is not advancing a ready-made alternative to section 107. However, as the government explores intervention tools beyond section 107, those tools should be built around clear design principles:

1. **Preserving bargaining**, by requiring a demonstrable record of good-faith negotiations and meaningful third-party assistance.
2. **A tight public-interest threshold**, defined through tripartite agreement.
3. **A neutral government role**, acting as a guarantor of a fair process and continuity for Canadians, rather than as an actor dictating outcomes.

The specific mechanics of any such tool should be developed at a tripartite table. The goal is not to weaken workers' rights, but to ensure that Canada's collective-bargaining system can protect both fundamental labour rights and the national interest.

### **Study Focus: Maintenance of Activities / Essential Services (Canada Labour Code)**

Given the focus of this study, FETCO wishes to provide brief background on two closely related matters: the Code's maintenance-of-activities/essential services provisions, and the legal context on the right to strike and the use of section 107.

The “essential services” or “maintenance of activities” provisions of the Canada Labour Code require that services continue only to the extent necessary to prevent an **immediate and serious danger to the safety or health of the public**.

The Canada Industrial Relations Board (CIRB) has consistently interpreted this threshold as to what is strictly necessary to prevent immediate danger and has repeatedly found that economic or financial risks, including threats to Canada’s economic well-being, do not trigger the provisions.

Most recently, the CIRB concluded that a full national railway work stoppage involving CN and CPKC did not engage the maintenance-of-activities requirements.

Even where maintenance-of-activities provisions apply, serious implementation challenges remain.

First, employers and unions rarely agree on which services must continue during a work stoppage. As a result, disputes are litigated before the CIRB, requiring extensive evidence and often taking months or years to resolve.

Second, even where essential services are identified, determining how they will be delivered in practice presents significant hurdles. Many transportation operations are fully networked systems. Regulatory requirements, safety obligations, and obligations under the Canada Transportation Act often mean that partial operations are not feasible. In practice, providing limited services may require the entire operation to continue running, creating obvious challenges during labour disputes.

There is no one-size-fits-all approach. Operational realities in rail, ports, air, and logistics are simply too different for a uniform model to work.

#### **Related Legal Context: Right to Strike and Section 107**

Canadian courts have been clear that the right to strike is not absolute.

The Supreme Court of Canada has repeatedly held that government-imposed restrictions on strike activity can be constitutional where bargaining has reached impasse or where strike activity is replaced by a fair and balanced interest arbitration process.

Recent decisions of the Ontario Superior Court of Justice have reaffirmed these principles, including cases involving Ontario colleges and Canada Post. In both instances, the Court confirmed that ending a lawful strike can be constitutionally permissible where bargaining has stalled and fair dispute-resolution mechanisms are in place.

These findings are consistent with the Supreme Court’s decision in *Saskatchewan Federation of Labour*, which confirmed that while strike activity is constitutionally protected, it may be limited where replaced by meaningful dispute-resolution mechanisms.

There is nothing in section 107 of the Canada Labour Code that is inconsistent with these principles. Ministerial orders under section 107 can, and do, respect them in practice. To date, section 107 has been invoked only after months of failed bargaining and damaging work stoppages in critical industries, and legal challenges to its use have not been successful.

## **Conclusion**

[FETCO welcomes](#) Minister Patty Hajdu's recent announcement to launch a standing tripartite advisory table. This is precisely the kind of forum needed to examine evidence on what is working and what is not in the Canada Labour Code, and to co-design tools and processes that have legitimacy because they are driven by consensus.

FETCO and its members are committed to that process and to practical, evidence-based solutions that strengthen bargaining outcomes.

As government considers whether additional tools may be warranted alongside section 107, FETCO stands ready to engage constructively toward a modern, balanced framework that:

- keeps parties bargaining in good faith and supports negotiated settlements;
- respects the right to strike, and;
- includes a credible public-interest backstop for exceptional situations when nationally critical sectors and supply chains are at stake.

The objective is fewer crises, more durable agreements, and greater stability for workers, employers, and Canada as a whole.

FETCO would be pleased to provide any additional information that may assist the Committee in its study.

## **About FETCO**

FETCO (Federally Regulated Employers – Transportation and Communications) is Canada's largest association representing federally regulated employers in the transportation, communications and finance sectors. These sectors collectively employ 2.1 million Canadians and generate more than \$543-billion annually. FETCO is dedicated to advocating for sound public policy and fostering a positive and stable labor relations environment in Canada.