



January 2008

Letter to Liberal MPs Regarding Bill C-415 and C-236

Re: Private Members' Bills C-415 An Act to amend the Canada Labour Code (replacement workers), C-236 An Act to amend the Canada Labour Code (replacement workers)

Dear Member:

Over the past year, three Private Members' Bills have come before the House of Commons seeking to ban the use of replacement workers in the event of a strike or lock-out at a federally-regulated organization. On behalf of Canada's airports, the CAC continues to share serious concerns about the potential impact of these bills.

Canada's airports are important facilitators of trade and tourism in this country, employing 200,000 Canadians (directly) and producing an economic output of some \$45 billion. We deem Canada's airports' role to be that of an essential *economic* service.

Currently before the House, bills C-415 and C-236 would ban the use of a strike or lock-out at Canada's airports. While its stated intent is to protect "essential services," we contend that the definition of this term is too narrow to prevent the potential shut-down of one or several of Canada's airports in the event of a work stoppage if this bill becomes law. We have notified the Minister of Transport, Infrastructure and Communities to this effect.

We submit that section 87.4 of the Canada Labour Code is an "emergency services" provision, not an "essential services" provision, as many allege. As tabled, C-415 amends s. 87.4(1) by adding the word "essential" to the existing text.

*87.4(1) During a strike or lockout not prohibited by the this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of essential services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the **safety or health** of the public.*

In our opinion, the addition of the word "essential" to s.87.4 does nothing to enhance Canada's protection against the harm caused by labour disruption to

Canada's essential infrastructure industries – sectors such as Canada's airports. The essential services language in s.87.4 would need to be extended beyond immediate threats to health and safety to ensure protection against *economic* harm to the public caused by a strike or lockout. We have similar concerns with Private Members' Bill C-236.

What these bills are trying to accomplish is difficult to do through simple amendments to the Canada Labour Code, as have been attempted over the past year. We submit that any ban on replacement workers requires a more thorough process and a more substantive look on the potential income to the economic and safety welfare of Canadians. We urge you to not support the two bills that remain before the House.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Facette", written over a horizontal line.

Jim Facette
President & CEO

Backgrounder: The Canada Labour Code and "Essential Services"

The Canada Labour Code presently provides for limited restrictions on the use of replacement workers. Today, it is an unfair labour practice to use replacement workers for the demonstrated purpose of undermining a union's representational capacity.

In other words, the Code prohibits the use of replacement workers for the purpose of busting the union. This limited and measured restriction on the use of replacement workers was enacted as part of sweeping and balanced reforms to the Code in 1999.

The 1999 reforms were a product of extensive tripartite consultations between labour, employers and government. To date, the Canada Industrial Relations Board has not had to decide a single case alleging breach of the replacement worker restriction presently in the Code.

Section 87.4 of the Canada Labour Code aims to protect "essential services." However, the wording of the section is such that essential services in this context really means "emergency services:"

*87.4(1) During a strike or lockout not prohibited by the this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of **essential services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.***

By way of contrast, British Columbia's "essential services" provision in its labour legislation refers to the "health, safety and *welfare* of the residents of British Columbia." The B.C. Labour Board has determined that "welfare" can include economic impact. B.C.'s essential services law protects against economic harm caused by labour disputes, Federal law does not and would not.

Unlike Quebec's regime, the statute on which C-415 is modeled, neither the federal government, nor the Canada Industrial Relations Board (CIRB) nor the Minister of Labour have the power under s. 87.4 to order an end to a strike or lockout if it is felt that essential services are not adequately provided. In fact, s. 87.5 (3) specifically provides that the strike not be superseded while any question of maintenance of activities is being considered by the Canada Industrial Relations Board.

Again in Quebec, the law exempts an employer from the ban on the use of replacement workers when bargaining unit members fail to provide required essential services. Section 87.4 provides no such exception. If the union or

the employer fail to provide essential services, the strike continues and there is nothing government can do except to legislate an end to the strike or lockout.

Finally, unlike Quebec's law, s. 87.4 provides no power to the Minister of Labour to declare a service to be essential.