



Anti-Scab Legislation

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“The replacement of striking workers is an impediment to harmonious labour relations and may violate the workers’ right to strike.”

- International Labour Organization (ILO), Committee of Experts on the Application of Conventions and Recommendations, commenting on Alberta’s Bill (Ensuring Fiscal Sustainability Act, 2019)

Employers’ use of scab labour—pitting desperate workers against each other—is an affront to the values of social justice, equality and fair play held by working people in Canada.

It is high time to remove this immoral and destructive influence from labour relations in the federally regulated private sector (FRPS) by implementing a total ban on scabs.

The deployment of scabs in a work stoppage is economically wasteful, detrimental to constructive and orderly labour relations, and harmful for workers, their families and surrounding communities.

When a company uses scabs, they turn routine, typically short-lived stoppages into drawn-out, desperate, and destructive conflicts. Workers stand to lose their jobs, their homes and sometimes their unions; disputes can become dug-in and embittered, creating losers on all sides.

Banning replacement workers limit the unnecessary destruction of economic potential, workplace morale, community cohesion, and individual lives.

Canada has decades of positive experience with a prohibition on scabs. Quebec has had anti-scab legislation since 1977 (strengthened in 1983); British Columbia and Ontario introduced a prohibition in 1993; the Ontario legislation was repealed two years later. Since 1998, the federally regulated private sector has also had a prohibition on the permanent use of scabs in the *Canada Labour Code*, as do provinces like Manitoba.



Why we need anti-scab legislation

An employer's recourse to scabs is counter-productive to constructive and well-functioning labour relations.

The use of scabs typically prolongs work stoppages by deepening and entrenching bitter divisions—not just between striking workers and the employer, but also between workers, community groups, and sometimes even family members.

Scabs and violence go together. Police officers, special constables, and even troops are commonly deployed to facilitate the movement of scabs across picket lines, further inflaming tensions and raising the spectre of violence.

Inciting violence can be in the interest of employers. This is because it sours public opinion on a strike, reinforces media stereotypes about unions being violent, threatens to criminalize lawful behaviour in a civil dispute, and provokes authorities to intervene against the union.

Scabs and violence go together.

“Experience shows that violence most often occurs when replacement workers and strikers come into contact with each other in a heated labour dispute.”

– Andrew Sims, Chair of the 1996 Task Force reviewing Part I of the *Canada Labour Code*



Who would a federal ban on scabs apply to?

A ban on scabs would affect 22,000 employers and 1 million employees in the following federally regulated industries:

- Air transportation;
- Banks;
- Grain elevators;
- First Nations band councils and Indigenous self-governments (certain activities);
- Most federal Crown corporations (e.g. Canada Post Corporation, Canadian Broadcasting Corporation);
- Port services, marine shipping, ferries, tunnels, canals, bridges and pipelines (oil and gas) that cross international or provincial borders;
- Postal and courier services;
- Radio and television broadcasting;
- Railways;
- Interprovincial road transportation services including trucks and buses;
- Telecommunications such as telephone, Internet, telegraph and cable systems; and
- Uranium mining, processing and atomic energy.

These industries are regulated under the *Canada Labour Code*. They are dominated by some of the largest and most powerful global multinational corporations in Canada: Bell, Rogers, Telus, CN Rail and CP Rail, Air Canada, Royal Bank, Bank of Montreal, and Enbridge, among others.

A federal ban on scabs would not be exceptional, either in Canada or abroad.

Countries that already have prohibitions or restrictions on the use of scabs: Canada (Quebec and British Columbia), United Kingdom, Spain, France, Portugal, Greece, France, Slovenia, Turkey, South Africa, South Korea, Argentina, Mexico, Chile, Czechia, Hungary, Tanzania, Cambodia, and others.

Source: International Labour Organization

A woman with her hair in a bun, wearing blue scrubs, is shown in profile from the chest up, looking towards the right. She has a name tag on her chest and a pen in her pocket. The background is a plain, light grey color.

Workers risk everything in a strike or lockout—scabs ratchet up tensions even further

In a collective bargaining dispute, the decision to exert economic pressure (and how much pressure) is always carefully weighed against the financial constraints and competitive pressures on the employer. Unions and workers have no influence over an employers' decision to lock out employees; but the decision to strike is never taken lightly.

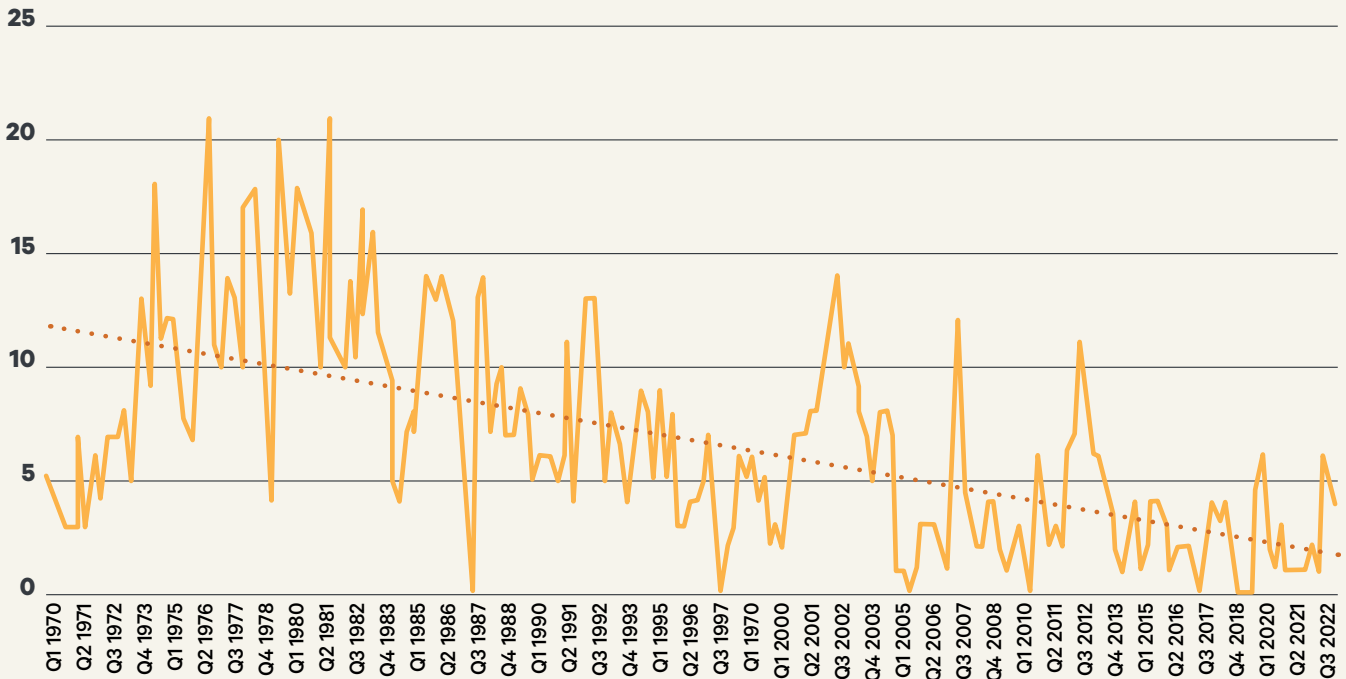
In a strike or lockout, the company's production, income and competitive position may be put at risk. In contrast, workers put everything on the line: their income, their jobs, their house, their car, their benefits, and their family's future. Companies can build inventories and rely on loans and accumulated financial assets during a stoppage; with half of Canadians living paycheck-to-paycheck, workers typically don't have significant savings to rely on.

MYTH:
**ANTI-SCAB LEGISLATION
 IN THE FRPS WILL MEAN
 MORE STRIKES**

In the federal jurisdiction, the vast majority (approximately 95%) of bargaining rounds to renew collective agreements are completed successfully without any work stoppage.

The number of strikes and lockouts each year in the FRPS can be counted on the fingers of both hands (and often one hand) and are a fraction of the number reached even in the 1980s.

**NUMBER OF WORK STOPPAGES,
 FEDERAL PRIVATE SECTOR, 1970 TO 2022**



Today there are far fewer stoppages each year than before. But strikes and lockouts tend to be either very short or very long. In a minority of disputes, the presence of scabs contributes to prolonging and embittering wage stoppages, causing economic inefficiencies and losses for everyone.

The pattern of stoppages following the introduction of anti-scab legislation also provides no reason to believe that strikes are going to rise significantly or over time. In Quebec, the frequency of work stoppages was rising prior to the introduction of anti-scab legislation in 1977. In British Columbia, the number of strikes and lockouts were already trending downwards before anti-scab legislation in 1993, and it continued to fall afterwards. With or without anti-scab legislation, the frequency of strikes began to fall in the 1980s and has remained at relatively low levels.

MYTH: A PROHIBITION ON THE TEMPORARY USE OF SCABS WILL PUT EMPLOYERS AT A SERIOUS DISADVANTAGE

Right now, federal employers do not resort to scabs in an estimated 3 in 5 strikes or lockouts. In a majority of stoppages, employers do not deploy scabs anyway, so most employers will be unaffected by a general ban on the temporary use of scabs.

The problem lies in a minority of strikes and lockouts where employers bring in scabs, enflaming the dispute, escalating tensions, and deepening resentments.

There is public interest in banning scabs.

In a famous study of a bitter 1994-96 strike at Bridgestone/Firestone, involving one of the largest use of scabs in US history, economist Alan Krueger and his colleague looked at the reasons for defective Firestone/Bridgestone tires that subsequently caused 271 deaths and more than 800 injuries. Krueger concluded the defective tires were partly the product of under-trained and poorly-supervised scab workers, but also the “brutal” post-strike working conditions in which scabs and union members were forced to work side by side.

Source: Krueger, A. and A. Mas, “Strikes, Scabs, and Tread Separations: Labor Strife and the Production of Defective Bridgestone/Firestone Tires,” *Journal of Political Economy* 112:2 (April 2004).

FACT:
**BANNING THE USE
OF SCABS WILL NOT
UNDERMINE INVESTMENT
OR LEAD TO
UNSUSTAINABLE WAGE
DEMANDS AND WAGE
INCREASES**

There is no evidence of lasting, significant wage gaps between Canadian jurisdictions adopting a ban on scabs (Quebec and British Columbia), and those that do not. There are many economic and institutional factors that drive faster or slower wage growth in a particular time and place.

To be sure, Canada has a real and long-standing problem with weak business investment, but a ban on scabs is not the source of the problem. The weakness of business investment in Canada goes back decades and originates in Canada's ownership and industrial structure, the easy extraction of resource rents, a reliance on cheap labour and a discounted currency, and other factors. Bogus 'solutions' like corporate income tax cuts and deregulation have utterly failed to stimulate business investment.

A ban on scabs is not the cause of weak business investment and continuing to allow scabs to be used will not address the problem of weak investment.

What happens when employers don't have easy access to scabs?

They bargain fair contracts, without strikes or lockouts!

UPS was racing behind the scenes to retrain 70,000 workers as strikebreakers last month as it negotiated with the Teamsters, according to an internal document obtained by Bloomberg Law...The shipping and delivery giant had just trained 38% of its replacement workforce as of July 23, two days before the company settled with the International Brotherhood of Teamsters.

– “Behind the Scenes of UPS Efforts on Strikebreakers,” Bloomberg Daily Labor Report, 14 August 2023.

UPS, union avoid strike that could have cost billions with 'historic' new deal

FleetOwner, July 25, 2023

The UPS Teamsters deal is collective bargaining at its finest

MSNBC, July 26, 2023



Labour's Priorities for Anti-Scab Legislation

1. Implement robust anti-scab legislation, now.

This issue has also been studied extensively over the decades; the Liberal Party was re-elected in 2021 on a promise to implement a ban on scabs, and has reiterated this commitment in its Supply and Confidence Agreement with the New Democratic Party. It's now time to adopt a meaningful prohibition on the temporary use of scabs under the *Canada Labour Code*, with strong compliance and enforcement mechanisms.

2. The definition of “replacement worker” should be broad.

It should include:

- New employees hired after notice to bargain;
- Managerial employees;
- Other non-bargaining unit employees or employees from other locations;
- Contractors; and
- Volunteers, employees of other companies or the public.

3. The definition of “struck work” should be broad so as to include remote working and telework/working from home.

4. There should be a right of workers to refuse struck work, as there already is in the *British Columbia Labour Relations Code*, including protections against reprisals for workers refusing to perform struck work.

5. We need strong enforcement provisions.

Notice to the union should be required when struck work is being performed, by management or anyone else. There should also be a robust mechanism to investigate compliance with the prohibition on scabs akin to what is already provided for in the *Quebec Labour Code*.

6. The existing obligation in the *Canada Labour Code* to provide services “to the extent necessary to prevent an immediate and serious danger to the safety or health of the public” should remain unchanged.

If essential work needs to be done to prevent an immediate and serious danger to public health and safety, the union must be given the first right to perform essential work, not scabs or managers.

7. The current, limited ban on the permanent replacement of striking or locked out workers with scabs in the *Code* isn't working.

The existing language requires that a union establish that an employer deployed scabs for “the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives.” The requirement to demonstrate intent sets an impossibly high bar; as a result, very few unfair labour practice challenges have successfully been brought under this provision.

8. Finally, there are related improvements that should be made to the *Code*.

Workers' right reinstatement following a strike or lockout to be strengthened. The New Democratic Party and Bloc Québécois' Private Members Bills of MPs Alexandre Boulerice (C-302) and Lousie Chabot (C-276) contain language for accomplishing this.

There should also be a right to have employee discipline or discharge during a strike sent to arbitration, as in the *Quebec Labour Code*.

